97-84056-11

National Civic Federation

Draft bill for the regulation of public utilities

[New York]

[1914]

97-84056-11

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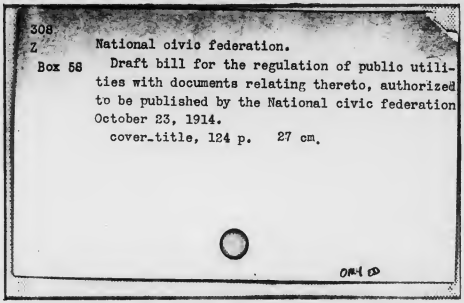

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FILM SIZE: 35mm REDUCTION RATIO: 14:1 IMAGE PLACEMENT: IA (IIA) IB IIB

DATE FILMED: 3-27-97 INITIALS: PB

TRACKING # : MSH 21341

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DRAFT BILL

FOR THE

REGULATION OF PUBLIC UTILITIES

WITH DOCUMENTS RELATING THERETO

AUTHORIZED TO BE PUBLISHED BY

THE NATIONAL CIVIC FEDERATION

OCTOBER 23, 1914

Resolutions adopted by the Executive Council of the National Civic Federation at its meeting October 23, 1914.

Whereas, in the opinion of The National Civic Federation, this Draft Bill with the documents attached is an exceedingly valuable contribution to the subject of the regulation of public utilities by the public; therefore be it

Resolved, that The National Civic Federation hereby authorizes the publication of the Draft Bill with the documents attached.

Whereas, the regulation of public utilities raises questions upon which opinions differ, by reason of differences in the point of view, and these same differences of point of view are found within the membership of The National Civic Federation, as well as outside; therefore be it

Resolved, that it is undesirable for The National Civic Federation to attempt to pass judgment upon the Draft Bill for the regulation of public utilities prepared and submitted by the Executive Council of the Department on Regulation of Public Utilities.

Resolved, That the thanks of The National Civic Federation be offered to the members of the Executive Council of the Department on Regulation of Public Utilities for the long and careful work which they have done in this connection, and for the valuable result of their labors, and also to all who have in any way helped to elucidate this far-reaching and important question.

MEMORANDUM

By Seth Low and William R. Willcox a Special Committee of the Executive Council of The National Civic Federation To Whom was Referred for Consideration all Questions in Relation to the Draft Bill for the Regulation of Public Utilities

In 1907, the National Civic Federation appointed a Commission on Public Ownership and Operation to investigate, in this country and abroad, the history of such movements up to that date. The commission was thoroughly representative, and embraced in its membership men who believed in public ownership and operation, and men who did not; it embraced representatives of organized labor, and men interested in the private ownership and operation of public utilities; it embraced students of the subject, and men engaged in the actual regulation of public utilities as members of public commissions. This commission reported that public utilities from their nature tend to become and ought to be monopolies; and that unregulated monopoly in so important a field is impossible.

In view of this conclusion, The National Civic Federation, in 1911, called another conference of people interested in this subject; as a result of which it was determined to create a department to prepare a draft bill for the Public Regulation of Interstate and Municipal Utilities. Enquiry revealed the fact that every state in the union has a regulative commission of some sort, except the states of Delaware, Wyoming, and Utah. Hence, the desirability of uniform legislation upon this subject, within reasonable limits, is evident.

The Department thus formed promptly appointed an Executive Council to prepare a draft bill. This Council consisted of the following members:

Edward M. Bassett,
Franklin Q. Brown,
Halford Erickson,
John H. Gray,
William D. Kerr,
Franklin K. Lane,*
Blewett Lee,
Emerson McMillin,
Milo R. Maltbie,
Arthur Williams.

The Executive Council organized without delay by the election of Emerson McMillin as Chairman. By the kindness of the Univer-

*Mr. Lane retired on account of his official duties before the drafting of the bill began.

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sity of Minnesota, it was able to secure the services of Professor John H. Gray as Director. Mr. William D. Kerr was associated with Professor Gray as Assistant Director. The first work of the Executive Council, as so organized, was to collect all the legislation both by the United States and in all of the States of the Union on the subject of the regulation of public utilities. This information, which of itself is of the greatest possible value to all who are interested in this subject, is contained in a volume published by the Executive Council entitled "Commission Regulation of Public Utilities."*

With this information at hand, the securing and preparation of which required almost a year, the Executive Council began the preparation of a draft bill which should embody, as far as possible, the best features of all the legislation already existing upon the subject, together with such additional features as the experience of the members of the Executive Council might suggest. They went further, and endeavored to secure suggestions from all who would co-operate. The result is the attached draft bill for the Regulation of Public Utilities, containing more than 300 sections. Of these sections as drafted only sixty have been criticised by anybody; although the bill has been submitted to very wide criticism on the part of members of commissions engaged in the actual regulation of public utilities, of men engaged in the formation and operation of public utilities, and of students of the subject of many shades of opinion. It is evident, therefore, that the draft bill as a whole embodies a form of legislation which meets with wide approval, except as to such sections as deal with matters upon which differences of opinion are inevitable.

These matters, though few in number, are of great importance; and it became apparent as the preparation of the draft bill proceeded that it would be impossible to secure a unanimous approval by the Department of this draft bill, or of any other dealing with this subject. The draft bill, therefore, is published upon the authority of the Executive Council of the Department whose names have already been given, subject to the reservations submitted in the memorandum of dissent. As stated in the dissenting report of Messrs. E. M. Bassett, John H. Gray, and Milo R. Maltbie, "a bill of this sort is necessarily a compromise measure and therefore does not represent exactly the view of any one member of the Council." All of the members of the Council believe that the draft bill is an advance, in many respects, on existing legislation. The dissenting report which is attached to the draft bill discusses from the point of view of the dissenters three questions of large significance.

The draft bill, with the dissenting report, was laid before the

* This volume can be had by application to The National Civic Federation. Its price is $8.50.

Executive Council of The National Civic Federation at a special meeting called for the purpose in January, 1914, without having been submitted, for the reason given, to the Department as a whole. At this meeting the undersigned were appointed a special committee to recommend what action should be taken by The National Civic Federation, in view of this circumstance. The special committee recommends that the names of those comprising the Department on the Regulation of Public Utilities, as originally created by The National Civic Federation, be omitted from this document, as it is evidently unfair to hold the members of a department in any way responsible for a measure upon which they have not had an adequate opportunity to pass; and that the draft bill as agreed upon by the Executive Council of the Department be printed as reported, together with the report and the memorandum of dissent which were attached thereto.

The differences in regard to the bill reflect the difference in the points of view of those who make them. The radicals are inclined to press regulation to the limit even if it makes it impossible to secure private capital for the construction and conduct of public utilities. In the minds of many of them public ownership and operation loom up as not objectionable alternatives. Those who have to do with the procuring of private capital for public utilities believe that too much regulation will easily make private capital unavailable. These, therefore, lean towards limiting regulation as much as possible. In this conservative element there are again great differences of opinion. Some believe in public regulation and wish to make it practicable and successful. Others accept it reluctantly and are fearful of any limitation which may interfere with established practices.

The National Civic Federation cannot pretend to pass judgment on the issues thus raised, though it is probable that the wise course to be followed lies between the two extremes. The undersigned conceive, therefore, that the function of The National Civic Federation is to make this contribution to the subject of the regulation of public utilities as useful as possible by throwing light upon it from many points of view. They, therefore, subjoin a memorandum, for which they do not ask The National Civic Federation to become responsible, on some of the large questions involved. Several appendices, having the same object in view, are attached to the draft bill.

Appendix A is a report prepared at our request by Mr. William D. Kerr. This report states the most important suggestions received in connection with the disputed sections of the draft bill, and gives as impartially as possible the arguments pro and con.

Appendix B is a list of the railroad and public service commissions already established in the United States.

Appendix C is the report to The National Civic Federation on Public Ownership and Operation, made in 1907.

MEMORANDUM BY THE UNDERSIGNED.

When a legislature is clear as to the policy which it wishes to embody in any new legislation upon this subject, the sections of the draft bill which deal with such questions of policy can be readily adapted by a competent draftsman to conform to its wish. The purpose of this discussion is to state as concisely as possible some of the differing policies that are favored, and the consequences likely to follow from the adoption of one or the other.

Public regulation necessarily means restriction on the freedom of private action; but, if public regulation of privately-owned and operated public utilities is to remain a practicable policy, it must not be carried so far as to result in the strangulation of private enterprise. The problem to be worked out, therefore, in connection with the public regulation of such utilities is, to give power enough to the regulating commission to enable it to prevent the abuses to which uncontrolled private management has been shown to be subject, without making exactions so severe as to make it impossible to secure the private capital that is necessary to maintain existing facilities in a high state of efficiency, and to develop new enterprises when such are necessary. Such excessive restrictions may be embodied in the law itself; or, they may flow from the bad judgment of the commission charged with the administration of the law. For the purposes of this discussion the law itself is the subject of study; but it is desirable to point out, at this place, that the character of the men to whom the administration of such laws is submitted is of vital consequence. If any such law is to work well, the men administering it must be men of high character and of good judgment. Without high character, such men may fall an easy prey to the lamentable corruption of those who are willing to buy privilege even at the price of debauching the public service. Without good judgment, the interests of the public and of the public service corporations are certain to suffer. With men of high character and of good judgment, experience is likely to make such a body increasingly serviceable to all the interests concerned.

It is admitted that any such public service commission, by whatever name it may be called, must have large discretionary powers; and it is probably better to make this discretion large, despite the possibilities of abuse, than by making the law too rigid to make it impossible for the commission to deal equitably with exceptional conditions.

The first question of importance that emerges is, as to the determination of values against which stock or bonds are to be issued; whether this determination shall be made by the representatives of the public or by those who furnish the money. The draft bill leaves this determination to the representatives of the public, upon the theory that if regulation means anything it means this; so that both investors and the public who are to be served by the utility may be protected against fraudulent practices and exaggerated values. This being granted, it remains to be decided whether there shall be an appeal to the courts from decisions of the commission on questions of value. The draft bill is drawn, consistently, upon the theory that the only appeal to the courts from the action of the commission shall be on questions of law, and that there shall be no appeal as to its findings upon questions of fact, such as value. Some of those who are engaged in establishing new public utilities hold the view that upon questions of value, if upon no other question of fact, there should be an appeal to the courts.

This question develops into another phase which ought to be stated. If the public assumes responsibility for the values against which stocks and bonds may be issued, it is held by some that the public becomes morally responsible for the existence of such values. There is also at least the possibility that, in time, the public will be asked to guarantee the values which it stands sponsor for. Should the time come when the public is willing to do this, it can undoubtedly secure private funds for such enterprises at much lower rates of interest than can be had at the present time; for private money for such enterprises can be had only at a price commensurate with the risk. If the risk is large, private capital will require large returns because of the risk. If the risk is small, private capital can be had cheaply because of the absence of risk. On the other hand, because the fixing of values by the public perhaps tends in this direction, there are those who maintain that public regulation should not attempt to determine values but should call for the most complete publicity. Under such a system, private investors would be given the fullest possible information, and would then be expected to look out for themselves. If the private investor were the only party to be considered, such a system might be satisfactory. There would be nothing, however, in such a case, to protect the public against unreasonable financial burdens as these affect good service, except the arbitrary discretion of the public service commission in fixing rates. It would appear to be more difficult to exercise arbitrary discretion in such a matter, fairly, than to determine with justice actual values against which stocks and bonds may be issued.

Section 210 of the draft bill deals with the question of the joint use of facilities by possibly competing public utilities. So far as

railroad service is concerned, the public policy in New York State is well established, that, for the distance of a thousand feet, joint use of rails must be permitted upon equitable terms. So far as gas is concerned, joint use would appear to be impossible; but, as regards telephonic service and electric lighting, joint use is often practicable and may be greatly in the public interest. It is worth while to point out that the American Telephone and Telegraph Company, in its recent arrangement with the Government, has given its consent to joint use of its facilities upon terms satisfactory to the Government. It has been suggested that joint use should not be permissible as between competing companies. The draft bill recognizes the propriety of the joint use of public facilities under certain conditions, even as between competing companies. It is certainly in the public interest that poles and wires in the streets of a city or town should not be duplicated unnecessarily. The draft bill gives to the commission ample authority to prevent competition in public utilities, where competition is not in the public interest. It may also be suggested that, where joint use of any facility is permitted, whether as between competitors or non-competitors, the management of the facility thus jointly used should always be left in full control of the corporation owning it.

Sections 235-9 of the draft bill deal with the question of depreciation, upon the assumption that this term is broad enough to include obsolescence and replacement. Probably depreciation, as a legal term, does include obsolescence and replacement; but the question of obsolescence, especially in telephoning, is so important that the thing might well be emphasized in the law by the use of this word as well as of "depreciation." In telegraphing, "depreciation" would usually provide adequately for replacement; but, in telephoning, the principal cost is not in the lines and poles but in the service stations. For the best service, apparatus that is comparatively new must often be discarded before it is worn out in order to give place to the last improvement. The same thing is true in the power houses of electric railways; and probably, in a greater or less degree, in connection with every public utility that depends upon so new a science as electricity. It is very difficult to lay down a general rule applying to all manner of cases which will not provide either too small or too large a fund for depreciation and obsolescence. Too small a fund may expose both the public and the operating company to hardship, and too large a fund may equally have the same effect. Probably there is no way to deal with this question in a law except to give wide discretion to the commission representing the public. A Depreciation Fund Board may sometimes be

created, with authority to increase or decrease, according to circumstances, the ordinary and normal fund set aside for these purposes. The effect of unnecessarily heavy charges for depreciation and obsolescence, or of insufficient allowance therefor, is so serious that this provision of a permanent board to adjust the matter from year to year, in the light of actual circumstances, appears to offer a wise solution of this very difficult problem. Such a board would enable a commission to deal in the light of circumstances with the question of depreciation as applied to a new company or to a company in difficulties.

One of the questions discussed in the dissenting report is that of State vs. Local franchises, dealt with in the draft bill in Sections 277 to 299. The view of the majority of the Executive Council is sufficiently expressed in the provisions of the act, and the dissenting opinion is clearly set forth in the dissenting report. Two points remain to be emphasized in the interest of clear thinking upon this subject. It is hardly conceivable that any locality will willingly abandon its right to say whether or not a franchise shall be granted for the use of any of its streets or public places; and, to that extent, the co-operation of the locality with the state commission is probably essential. But, if it be suggested that for this reason the regulation of local franchises should be entirely local, other considerations come into play. In the first place, many public utilities serve more than one locality, and it is clear that for public utilities of such a character there must be state regulation. In the next place, a state commission will necessarily have a wider experience than any purely local commission can acquire except in the very largest cities, and ordinarily it can command a higher grade of expert service for its guidance; but, beyond all that, it would seem to be clear that, so far as the fixing of rates is concerned, this must be done by a state commission even for a locality, if public regulation is to appeal to the sense of fairness of the average man. To submit questions of rates to a local commission is practically to permit the users of a service to say what should be paid for it.

In the matter of exchanging existing franchises running for a fixed term, for indeterminate franchises, this may be said. Speaking broadly, the indeterminate franchise is the best form of franchise, in the interest of the public as well as of the public service corporation, which has yet been developed. Every reasonable encouragement should be given for the exchange of franchises running for a fixed term into indeterminate franchises. It would appear to be fair to permit the locality which has assented to the fixed term, to pass upon the terms of the exchange. Any attempt to do this by general

law without the consent of the locality would be likely to evoke popular resentment because of its unfairness, precisely as the suggestion that the users of a public service should fix the rate to be paid for the same would be likely to antagonize the investor. By the draft bill, where a new locality is to be served the locality must give its consent, which in its nature will be indeterminate, and in doing so the locality can attach conditions not inconsistent with the provisions of the bill itself. Whether the draft bill sufficiently protects the rights of the locality, in these respects, is precisely one of the questions upon which legislators must pass. It is certainly within the province of the state to declare that franchises for a fixed term must give place at the expiration of the term to indeterminate franchises; and it ought not to be impossible for a public service commission, in any given case, to bring about an agreement as to terms between the locality and the corporation.

The question of holding companies, as discussed in the dissenting report, is unquestionably one of great importance. It is essential to point out, however, that there are different kinds of holding companies as to which, possibly, different attitudes should be taken. A local holding company of a local public service corporation would seem to be a device that can have no possible advantage for the public. A holding company, on the other hand, which makes it its business to control the operations of many small public service corporations, in as many different localities, may have many advantages for the public. In the view of some the method of financing proposed by the draft bill, in Sections 109 to 116, would be likely to force the creation of such holding companies in order to provide adequate funds for local service. But, whether this be so or not, it is clear that such a company, under broad-minded management, may give better service to every locality controlled by it than any small sized locality could command for itself. Such a holding company can command better expert talent and, by comparing methods and results in different localities, can bring the operation everywhere up to the highest standard obtained anywhere. Whether or not a local company shall pass under the control of a holding company, and the arrangements to be made in such a case for the protection of minority stockholders, would seem to be legitimate subjects for the discretion of a public service commission. It is not reasonable that the public regulation which applies to direct control should not also apply to indirect control.

The question of the capitalization of consolidated companies is dealt with in the draft bill in Section 119. It is believed that some standard of action must be laid down by the law. Such a rule be-

ing given, this section leaves large discretion to the judgment of the commission. The conditions to be dealt with are so various that such discretion is evidently necessary. The dissenting report simply proposes a different standard from that agreed to by a majority of those who prepared the draft bill.

It appears worth while to the undersigned, in closing this Memorandum, to emphasize the fact that the issue between public ownership and operation of public utilities and private ownership and operation of such utilities under public regulation, is not wholly, and perhaps not primarily, a question of economics. Grave and far-reaching social and political questions are inevitably involved. The public ownership and operation of a public utility here and there is a matter of comparative unimportance; but the adoption of such a policy by a large and populous state is a very different matter. For example, in San Francisco a street railway system has been taken over by the public and is now publicly owned and operated. By consequence it comes under the operation of the state civil service law. The application of this law to the men employed by the private company when taken over resulted in the loss of their places by many members of the local union of street car employes. The effect upon the union was so serious that the American Federation of Labor has sent a commission to Europe this year to study particularly this aspect of the question. Without attempting to anticipate the report of this commission, it seems to lie upon the surface that the civil service system and regulation of rates of pay by law are inconsistent with the methods and objects of collective bargaining by organized labor. In this apparently irreconcilable conflict, which system in this country would be likely to go by the board, the civil service system or that of collective bargaining? If the civil service system were to be broken down, the country would be in danger of returning to the demoralizing doctrine "To the victors belong the spoils," with the spoils multiplied so as to include every position necessitated by the operation of the public utility whatever it may be. If it be imagined that collective bargaining, including the right to strike, may be permanently enjoyed in connection with the public service, anyone who thinks this should recall what happened in democratic France when the railroad employes of France went upon a general strike. The men were ordered to the colors, and the strike was broken.

The attempt to carry out the methods of collective bargaining and the right of striking in connection with the service of the public is the pathway towards placing every public employment upon a military basis, for the large public will not permanently permit the

public servants either to coerce its judgment or to deprive it of public services which are essential to its well being. These are some of the social questions that are involved in the general acceptance of public ownership and operation as distinguished from private ownership and operation.

The political consequences of the acceptance of public ownership and operation on a large scale are certain to be not less vital. It was said by someone at the time of the Hayes-Tilden controversy in connection with the presidency, that, if the political patronage had been twice as large as it then happened to be, it would have been impossible to have escaped civil war. The public ownership and operation of public utilities of all kinds, if steam railroads are included, would add literally millions of men and women to the public pay-roll. If such a policy is adopted, it should be adopted deliberately, and the object of this memorandum is to point out that such questions as these far outweigh, in public importance, the financial questions that are involved as between public ownership and operation and private ownership and operation under public regulation. Public regulation of privately owned and operated public utilities, if such regulation is successful, ought to obviate the principal abuses which have developed in the past from the uncontrolled private ownership and operation of public utilities. If public ownership and operation on a vast scale is undertaken, what is to be the safeguard against the social and political dangers which have been pointed out, if these prove to be in fact as great as they appear to be?

SETH LOW,
WM. R. WILLCOX.

NEW YORK, October 23, 1914.

REPORT OF THE DEPARTMENT ON REGULATION OF INTERSTATE AND MUNICIPAL UTILITIES, OF THE NATIONAL CIVIC FEDERATION.

To The National Civic Federation:

The Department on Regulation of Interstate and Municipal Utilities submits to The National Civic Federation the following report:

ORIGIN OF THE DEPARTMENT.

One of the conclusions reached by the investigation carried on some years ago by The National Civic Federation on public and private ownership of public utilities was that these utilities tend to become and ought to be monopolies and that unregulated monopoly in so important a field is impossible. The conclusion, therefore, was that the only alternative is public ownership and operation or effective regulation. From this it appeared to The National Civic Federation that the time was ripe for taking a complete account of stock to find out what had actually been accomplished in the way of regulation and what hope of making regulation effective in the public judgment the immediate future holds out.

With this end in view The National Civic Federation called a large conference of people interested in this subject to be held in New York on June 23, 1911. The conference after long discussion, believing that regulated private ownership, if regulation can be made effective, is more consonant with American traditions than public ownership, recommended to the Federation that such an investigation be undertaken. It was believed that, whatever the ultimate form of ownership in the remote future may be, the American public is thoroughly committed to the experiment of regulated private ownership and that such regulation would be the best possible preparation for public ownership in case such ownership should later be adopted. It was clear to the members of the conference that the public had had much more experience in the field of regulation than in public ownership. It thereupon appointed a committee to report a plan and scope for such an investigation and took recess until June 30, in order that the committee might report.

The Committee recommended the creation of a separate department on interstate and municipal utilities to make a thorough in-

vestigation of the subject at home and abroad and to embody the results of such investigation in a formal report to be accompanied by the form of a definite bill embodying what in the light of the investigation has proved best in the various attempts at regulation by the federal government and in the states or the municipalities. At the adjourned meeting in accordance with the recommendation such a department was created with a membership representing all phases of interest and view.

The department membership being considered too large for a working or directing body, an Executive Council was appointed to have immediate charge and direction of the work. Disregarding some early changes the Council was made up of the following:

EMERSON MCMILLIN, American Light & Traction Co., New York, Chairman.
FRANKLIN Q. BROWN, Redmond & Co., New York, Vice Chairman, and Chairman Ways and Means Committee.
JOHN H. GRAY, Head of Department of Economics and Political Science in the University of Minnesota, Secretary, Chairman Committee on Form.
EDWARD M. BASSETT, Attorney and Former Member New York Public Service Commission, First District, Chairman Committee on Accounts and Reports.
HALFORD ERICKSON, Member Railroad Commission of Wisconsin, Chairman Committee on Rates.
WILLIAM D. KERR, Attorney, Chicago, Chairman Committee on Service.
BLEWETT LEE, General Solicitor of Illinois Central Railroad Co., Chicago, Chairman Committee on Franchises.
MILO R. MALTBIE, Member New York Public Service Commission, First District, Chairman Committee on Capitalization.
ARTHUR WILLIAMS, Chairman, Association of Edison Electric Companies and President of American Museum of Safety, Chairman Committee on Safety of Operation.
FRANKLIN K. LANE, Former Member Interstate Commerce Commission.

Mr. John H. Gray, of Minneapolis, was appointed Director of Investigation and secretary of the council and Mr. William D. Kerr, of Chicago, Assistant Director of Investigation. Mr. Bruce Wyman, of the Harvard Law School, was appointed Counsel in Investigation. Mr. F. C. Walcott became Treasurer of the Ways and Means committee and Mr. E. A. Quarles of The National Civic Federation, Assistant Treasurer. The council appointed the following sub-committees to have charge of the various subject divisions of the work:

ACCOUNTS AND REPORTS . E. M. BASSETT, Chairman.
CAPITALIZATION . . . M. R. MALTBIE, Chairman.
FORM . . . . . J. H. GRAY, Chairman.
FRANCHISES . . . . . BLEWETT LEE, Chairman.
RATES . . . . . HALFORD ERICKSON, Chairman.
SAFETY OF OPERATION . . ARTHUR WILLIAMS, Chairman.
SERVICE . . . . . WILLIAM D. KERR, Chairman.
WAYS AND MEANS . . . F. Q. BROWN, Chairman.

Work Done and Results Accomplished.

The Department took quarters in the Metropolitan Building, New York, and entered upon the systematic work of the investigation February 1, 1912. The Counsel in Investigation was directed to make a complete collection and compilation of all of the statutes, federal and state, relating to this subject according to a detailed outline previously drawn by the Assistant Director, Mr. Kerr. The field was divided according to this outline into sixteen main heads, as follows:

Basis of Rate Making
Establishment and Change of Rates
Publicity of Rates
Discrimination in Rates and Service
Service
Accounts
Reports of Utilities and Commissions
Regulation of Stock and Bond Issues
Intercorporate Relations
Franchises
Safety of Operation
Organization of Commission
Jurisdiction and Definition
General Powers of Commission
Commission Procedure
Enforcement.

Very early in the work a staff of five investigators—namely, Messrs. R. D. Fleming, I. E. Margulies, H. Salpeter, I. L. Sharfman and Charles F. Yauch—was organized at the main office of the de-

partment under the immediate direction of the Assistant Director, Mr. Kerr, to make further detailed analyses of the statutory material. This work was carried on continuously up to February 15, 1913, and separate pamphlets, one for each of these divisions of the statutory material, were printed as soon as ready and widely distributed to every public commissioner and to other interested parties with requests for criticisms and suggestions. The several parts have been brought together in a single volume and have been published with scope notes, cross references and indices in a volume entitled "Commission Regulation of Public Utilities."

Mr. R. H. Whitten of the Public Service Commission, New York, First District, was engaged as an expert to report on the relation of public utility industries to the public authorities in Great Britain. He was especially directed to examine the regulation of capitalization and of profits and to report on the sliding scale of charges for gas and payment of dividends by gas companies. He also reported on the sliding scale for gas in Boston, Massachusetts, and on the regulation of the gas industry at Toronto by the province of Ontario.

Mr. Delos F. Wilcox of the Public Service Commission, New York, First District, was sent to the Pacific coast as an expert to report on regulation in that region. He made a report on the origin, jurisdiction, powers and working of the California railroad commission, and gave a historical sketch of local regulation in the twenty-seven municipalities having charters under the home rule clause of the California constitution. To this he added a more detailed history of local regulation in the two chief cities of California, San Francisco and Los Angeles. This was supplemented by reports on regulation in the states of Oregon and Washington and a chapter was added on the street car and gas franchises in Minneapolis, Minnesota. These reports were printed for the use of the investigators, members of the Council and the various committees.

Following a topical outline prepared by the Director of Investigation, Mr. Wyman, the counsel to the department, had extracts made from the decisions of all the state commissions and Mr. R. L. Hale of New York was engaged to write a summary or résumé of these decisions to bring out for the use of the committees and the Council the general tendencies in commission decisions. Mr. Wyman also made a thorough search of the current decisions and furnished citations from all court decisions interpreting the various commission acts.

In addition to the field work done by Messrs. Wilcox and Whiten, the Director and the Assistant Director made personal visits to

many of the more important commissions, east and west, to confer with the commissioners, operators and attorneys and other interested and well informed persons in those localities and to study the organization and operation of the various commissions.

A thorough study of the court decisions as well as of general literature in the field of public utilities was made.

On the basis of all this work and investigation, tentative sections for a sample public utility bill were drawn and sent to all commissioners in the United States and other selected and interested parties for consideration and criticism. It is believed that the extended criticisms and suggestions offered by our committees and a very large number of interested parties have furnished a solid basis for a model bill. The generous and widespread response to our request for criticisms and general aid has been very gratifying and extremely helpful. Many parties spent weeks and months studying these tentative sections and giving us the benefit of their investigations. Every written criticism received at the office was manifolded and sent out to the members of the sub-committees for consideration. These committees have held many meetings and discussed the proposed sections and all of the criticisms relating thereto and then reported their conclusions to the Executive Council. The Council has held many prolonged sessions and considered the sections, the reports of the sub-committees, and oral and written criticisms and suggestions from individuals and representatives of associations, going over every section line by line and amending it as the circumstances seemed to require. After each revision by the council the sections have been reprinted.

Wherever written criticisms seemed of sufficient extent and importance the Director or the Assistant Director has attempted an oral conference with the interested parties to go over such criticisms in detail.

It may therefore be said that the bill, thus prepared and approved by the Executive Council of the Department and now offered for approval by The National Civic Federation, is the first bill since the earliest days of regulation that has ever been drawn with a full knowledge of all existing legislation in the field and after a careful survey and study of all of the more important court decisions and the general literature, and after taking into confidence and conference all of the members of all existing commissions in the country. The bill is the result of a wider conference and discussion with more people of more varied interests and views than any other bill ever offered in any jurisdiction in the United States. After such prolonged study and discussion we have attempted to embody all that is best

in existing legislation at home and abroad and to eliminate every feature that in practice has proved disadvantageous. Certainly no other bill in this field and no existing statute has ever had the variety or extent of effort put into it that has been given to this bill. We, therefore, offer the bill for your approval and for submission to the various states in the hope and the belief that, so far as it may be adopted, it will lead to a better understanding between these vitally necessary industries and the public that they serve than has heretofore been possible under less carefully drawn legislation, and that such regulation will be alike just and fair to the investor, the owner and the users of this service.

The work done, the result of which is now submitted, has cost a large sum of money, all of which was raised by voluntary contributions, and for which most sincere thanks are tendered.

It is with a sense of profound gratification that the Council is enabled to report substantial concurrence on the part of its members in the bill as a whole, the dissent to the bill as an entirety of Mr. Maltbie being recorded.* As is customary in an undertaking where individual views must to some extent yield to a majority each member has reserved the right to express dissent on special points.

By order of the Executive Council,

EMERSON McMILLIN,
Chairman.

NEW YORK, December 11, 1913.

* After the filing of the report Messrs. John H. Gray and E. M. Bassett joined with Mr. Maltbie in his dissent to certain provisions of the bill. Their dissenting report follows.

DISSENTING REPORT OF E. M. BASSETT, JOHN H. GRAY, AND MILO R. MALTBIE.

A bill of this sort is necessarily a compromise measure and, therefore, does not represent exactly the view of any one member of the council. While the undersigned believe that the bill is an advance in many respects on existing legislation, there are certain points on which it falls so far short of providing for effective regulation, that we feel compelled to dissent upon certain important points. The minor points of difference need not be mentioned.

I.

HOLDING COMPANIES.

The bill contains no provisions, such as may be found in all the more recent and progressive statutes of the various states, giving commissions jurisdiction over holding companies. Under the proposed model law, a company may not sell, transfer, mortgage or lease its franchise to another company, companies may not merge or consolidate, a company may not lease its plant or property to another company, without the permission of the supervisory board. Competing companies may not be eliminated and one company may not obtain control of another by any of these means without state approval. But the more subterranean and indirect method of buying up fifty-one per cent. or more of the stock of a public utility may be resorted to without any check, approval or even investigation.

No protection, direct or indirect, is provided for minority stockholders. They have no tribunal before which they may go and prevent a company hostile to their interests from buying a controlling interest and then proceeding to make inter-company agreements and to adopt methods of accounting which will seriously depress the value of their stock. The history of corporate finance compels us to ask: How can there be effective regulation and protection of minority stockholders with holding companies and with corporate relationships connected therewith outside of the sphere of control?

Without recommending that holding companies at present existing or the stocks now held by them be interfered with, we do believe that the bill should prohibit any additional shares passing into the hands of holding companies without investigation and

approval of such action by the commission, that purchases of stocks in other public utilities should be subject to similar restriction, that companies not public utilities should be prevented from acquiring stock in public utilities beyond a certain small percentage, and that the state commission should always have power to impose conditions and enforce regulations which will protect minority interests and the rights of the public. Such provisions would not prevent any act that could be made to appear in the public interest to the properly constituted public authority, but they would bring about publicity and compel those desiring such action to show how the public interest would be advantaged.

II.

CAPITALIZATION OF CONSOLIDATED COMPANIES.

We believe that the question of consolidation raises difficult enough problems when considered alone and upon its merits. It should, in our opinion, be treated in each case apart from other questions. It certainly should not be made the occasion of stock watering. We therefore recommend that a clause be inserted declaring that in no case should the capitalization of a company resulting from merger or consolidation exceed the capitalization of the consolidated companies.

The provision of the bill as now drawn (Section 119) opens the gate very wide for stock watering in providing that the capitalization may equal the value of the property. Value may be high because of large dividends due to excessive rates. Capitalizing according to value rather than according to investment may be a means of perpetuating excessive rates, and no commission should be practically forced by law, if companies so desire, to make value a basis for recapitalization.

The modern doctrine is that capitalization must have a direct relation to investment as it may be shown from time to time by sound bookkeeping methods. All the more progressive states by statute forbid the direct capitalization of a surplus simply because it is a surplus. We are opposed to allowing its capitalization indirectly by means of, and upon the occasion of, a consolidation.

The present bill, further, practically invites the consolidation of companies which have a surplus with companies that have watered capital; and the water of one may be spread over the surplus of the other. Naturally only those will consolidate whose value equals or exceeds their joint capitalization. If their joint value falls below their capitalization, they will not propose merger or consolidation.

Hence, the rule will be made to work but one way—for the capitalization of a surplus; the companies with deficits will never place themselves within reach of the commission. Such a one-sided proposition is seldom sound.

III.

STATE VS. LOCAL FRANCHISES.

In our opinion, Sections 277 to 289, which relate to franchise grants and municipal operation, should either be omitted entirely or be redrafted along different lines. The subjects covered do not properly belong in a scheme for state supervision of private corporations operating public utilities, and in nearly every state they are dealt with in separate statutes.

We particularly object to the provisions of Sections 278 to 280, which undertake virtually to deprive cities of all control over franchise grants affecting their own streets. Any private corporation now operating a public utility may, under the proposed law, get a new franchise without the consent of the municipality, abutting property owners, or the state itself. All it has to do is to file a document, and *ipso facto* it gets a franchise. In many states such a provision is unconstitutional; and in practically all, it is in conflict with the public policy of the state as reflected by statute after statute. It flagrantly violates the principle of home rule in that it deprives cities of the right to manage and control their own property—their streets and public places.

Further, is the new or old franchise to be effective in case of conflict? If the old franchises are not valid contracts, the companies are subject to the commission without any mention of the franchises in this bill. If they are valid contracts, we have no assurance that the contracts either could or would be abrogated by the provisions under consideration. The stockholders, and more particularly the bondholders, may have rights that they could not be deprived of by a mere agreement between the companies and the municipality.

Attention should be called to the fact that in the proposed bill municipal authorities have nothing whatever to say as to the terms of any automatically renewed franchise. They cannot exact any compensation for the use of public property. They cannot regulate the extent or character of use. They cannot determine the location of tracks, wires or pipes. They cannot fix the terms or period of acquisition. All these matters must either be left undecided or appeal must be had to a state board, ordinarily located at the state

capital; and many matters, if not covered by the franchise, may not be fixed after the grant is made even by a state board.

Any one familiar with the vested rights which attach to a franchise contract will appreciate how important it is that all franchise legislation be drawn with care. Those who have been through the subway negotiations in New York, or the street railway settlements in Chicago and Cleveland, know that it is unsafe to the public and to investors to leave so many matters undecided and to attempt in such a cursory and brief way to dispose of such great interests as arise from the granting of franchises for utilities that have practically become necessities in the complex conditions of modern city life.

Without, therefore, in any manner implying that we approve all the other provisions of the bill, we wish to enter our vigorous dissent to the provisions of the bill relating to the three matters discussed briefly above.

JOHN H. GRAY,
E. M. BASSETT,
MILO R. MALTBIE.

[FULL TITLE.]

AN ACT

REGULATING PUBLIC UTILITIES, CREATING AND ESTABLISHING A PUBLIC SERVICE COMMISSION, PRESCRIBING THE POWERS AND DUTIES OF THE COMMISSION AND THE RIGHTS AND DUTIES OF PUBLIC UTILITIES, PROVIDING PENALTIES FOR VIOLATIONS OF PROVISIONS OF THE ACT, REPEALING LAWS IN CONFLICT WITH THE PROVISIONS THEREOF AND APPROPRIATING MONEY TO CARRY OUT THE PURPOSES OF THE ACT.

[Short Title.]

AN ACT

REGULATING PUBLIC UTILITIES AND CREATING AND ESTABLISHING A PUBLIC SERVICE COMMISSION.

(NOTE: Title must conform to constitutional requirements of each state.)

It is enacted as follows:

1.[1] **Designation.** This act shall be known as the public service commission law.

[1] Numbers 2 to 10, inclusive, are not assigned to sections.

ARTICLE I.
DEFINITIONS.

11. Commission. Unless otherwise specified, the word "commission," when used in this act, shall mean the Public Service Commission of ....., which is created and established by this act.

12. Municipality. The term "municipality," when used in this act, shall mean and include any borough, town, village, city, county or other political subdivision of this state.

13. Municipal Council. The term "municipal council," when used in this act, shall mean and include the city council, common council, the board of aldermen, the board of selectmen, the

board of trustees, the town or village board, the city commission, or any other governing body of any political subdivision of this state.

14. Person. The term "person," when used in this act, shall mean and include individuals, associations of individuals, firms, partnerships, companies, corporations, their lessees, trustees or receivers appointed by any court whatsoever, in the singular number as well as in the plural.

15. Public Utility. (a) The term "public utility," when used in this act, shall mean and include every person that owns, operates, leases or controls, or has power to own, operate, lease or control:

(1) Any plant, property or facility for the transportation or conveyance to or for the public of passengers or property by railroad, street railroad or water.

(2) Any plant, property or facility for the transmission to or for the public of telephone messages, for the conveyance or transmission to or for the public of telegraph messages, or for the furnishing of facilities to or for the public for the transmission of intelligence by electricity.

(3) Any plant, property or facility for the generation, transmission, distribution, sale or furnishing to or for the public of electricity for light, heat or power, including any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power.

(4) Any plant, property or facility for the manufacture, distribution, sale or furnishing to or for the public of natural or manufactured gas for light, heat or power.

(5) Any plant, property or facility for the supply, storage, distribution or furnishing to or for the public of water for irrigation, manufacturing, municipal, domestic or other uses.

(6) Any plant, property or facility for the production, transmission, conveyance, delivery or furnishing to or for the public of steam or any other substance for heat or power.

(7) Any plant, property or equipment for the transportation or conveyance to or for the public of oil by pipe line.

(b) None of the provisions of this act shall apply to the generation, transmission or distribution of electricity, to the manufacture or distribution of gas, to the furnishing or distribution of water, or to the production, delivery or furnishing of steam or any other substance for heat or power, by a producer who is not otherwise a public utility, for the sole use of such producer or for the use of tenants of such producer and not for sale to others.

(c) The term "public utility" shall also mean and include two or more public utilities rendering joint service.

16. Rate. The term "rate," when used in this act, shall mean and include, in the plural number as well as in the singular, every individual or joint rate, classification, fare, toll, charge or other compensation for service rendered or to be rendered by any public utility, and every rule, regulation, practice, act, requirement or privilege in any way relating to such rate, fare, toll, charge or other compensation, and any schedule or tariff, or part of a schedule or tariff, thereof.

17.[1] Service Regulation. The term "service regulation" shall mean and include every rule, regulation, practice, act or requirement in any way relating to the service or facilities of a public utility.

[1] Numbers 18 to 30, inclusive, are not assigned to sections.

ARTICLE II.

ORGANIZATION OF A PUBLIC SERVICE COMMISSION.

31. Name and Constitution. There shall be created and established a commission which shall be known as the Public Service Commission of ————, consisting of five[1] members appointed by the governor, by and with the consent of the senate (or council), for terms of five[1] years each or until their successors are appointed and qualify. Immediately following the enactment of this law the governor shall appoint five commissioners, one of whom shall hold office until the first Monday in February, 1915, two, until the first Monday in February, 1917, and two, until the first Monday in February, 1919, or until their successors are appointed and qualify.[2]

[1] In some states a commission of three members with terms of six years each will suffice.
[1] In states whose legislatures meet annually this provision should be modified in such a way that a term will expire and an appointment will be made each year.

32. Salary of Commissioners. Each commissioner shall receive a salary of ——— a year,[1] payable in the same manner as the salaries of other state officers.

[1] The salaries of the commissioners should be not less than the salaries paid the judge of the highest state court.

33. Chairman Designated by Members.[1] As soon as possible after the first appointment of commissioners under this act the persons so appointed shall meet at the state capitol and organize by choosing one of their number as chairman. Thereafter whenever a new appointment is made or whenever any vacancy in the commission is filled the commissioners shall meet and choose one of their number as chairman.

[1] Alternative: **Chairman appointed.** The Governor shall designate one of the commissioners to be chairman during the term of office to which he is appointed and until his successor is appointed and qualifies. As soon as possible after the first appointment of commissioners under this act, the persons so appointed shall meet at the state capitol and organize. They shall choose one of their number chairman *pro tempore* in the absence or disability of the chairman. Thereafter, when a new appointment is made or when a vacancy in the commission is filled, the commissioners shall meet and choose one of their number to be chairman *pro tempore* in the absence or disability of the chairman.

34. Quorum of Commission. A majority of the commission shall constitute a quorum to transact business, and no orders of the commission shall be effective without the concurrence of a majority of the commission.

35. Oath. Each commissioner shall take and subscribe to the oath of office prescribed for state officers by the constitution.

36. Disqualification for Membership. No person employed by, or connected with, or holding any official relation to, or owning stocks or bonds of, or having any pecuniary interest in, any public utility under the jurisdiction of the commission shall be eligible to enter upon the duties or to fill the office of commissioner.

37. Removal of Commissioner. The governor at any time may remove any commissioner from office for inefficiency, neglect of duty, misconduct or malfeasance in office, for accepting, directly or indirectly, any gift, gratuity, emolument or employment from any public utility under the jurisdiction of the commission for voluntarily becoming interested pecuniarily in any such public utility or for failing to divest himself within a reasonable time of any interest in any such public utility acquired otherwise than voluntarily, or for holding another office under the constitution or laws of this state or of the United States. Before any commissioner may be removed he shall be given a copy of charges made against him and a time shall be fixed when he may be heard publicly in his own defense, which time shall be not less than ten days thereafter. If the commissioner shall be removed the governor

shall file in the office of the secretary of state a complete statement of all charges against such commissioner and of the findings thereon, with a record of the proceedings.

38. Manner of Filling Vacancies. Every vacancy in the commission shall be filled for the unexpired term by appointment by the governor with the consent of the senate (or council), provided, that if any vacancy occurs while the legislature is not in session the governor may make an interim appointment.

39. How to Sue and Be Sued. The commission may sue and be sued by its official name.

40. Seal. The commission shall have an official seal bearing the words "Public Service Commission of ———," of which the courts shall take judicial notice.

41. Conduct of Members and Employes. No commissioner or person appointed and regularly employed by and receiving a salary from the commission shall accept any gift, gratuity, emolument or employment from any public utility under the jurisdiction of the commission or any officer, agent or employe thereof, nor shall any commissioner or person appointed or regularly employed by and receiving a salary from the commission solicit, request from, or recommend, directly or indirectly to, any such public utility or any officer or agent or employe thereof the appointment of any person to any place or position. No commissioner shall hold any other public office.

42. Office of Commission. The principal office of the commission shall be in the city of ———.

43. Equipment of Commission. The commission shall be provided by the state with such offices, equipment and facilities as may be necessary for the performance of its duties.

44. Provision of Funds. There shall be appropriated out of the general funds for the maintenance and conduct of the commission such sums as may be necessary reasonably to enable the commission to perform its duties.

45. Secretary of Commission. The commission shall appoint a secretary who shall serve during the pleasure of the commission, shall take the usual oath of office, shall keep a record of all the proceedings, transactions, communications, minutes and official acts of the commission and perform such other duties as the

commission may prescribe, and shall receive a salary in an amount fixed by the commission.

46. Attorney of Commission. The commission is authorized to appoint and employ an attorney at a salary not exceeding —— per annum[1] who shall be a resident of this state and whose duty it shall be to represent the commission in all proceedings in any court or before any department of the federal government to which the commission may be a party and to advise the commission in any matter or matters and otherwise and in all respects to comply with the directions of the commission.

[1] The salary of the attorney should be the same as that of the attorney general of the state.

47.[1] Employes and Appointees. The commission is authorized to appoint and employ such other persons as may be necessary to enable it to perform the duties imposed upon it by this act and to designate the duties and compensation of such appointees and employes.

[1] Numbers 48 to 70, inclusive, are not assigned to sections.

ARTICLE III.

GENERAL POWERS OF COMMISSION.

71. Supervision and Regulation of Utilities. The commission shall have general power to regulate and supervise every public utility in accordance with the provisions of this act.

72. Arbitration. Whenever any public utility has a controversy with any other person and all the parties to such controversy agree in writing to submit such controversy to the commission as arbitrators, the commission may act as such arbitrators, and after due notice to all parties interested may proceed to hear such controversy, and their award shall be final.

73. Authority to Confer with Other Commissions. The commission may confer in person, by attending conventions or otherwise, with the members of railroad or other public utility commissions of other states and with the interstate commerce commission on any matters relating to public utilities.

74. Right to Inspect Books and Examine Agents of Public Utilities. The commission, or any commissioner, or any person or persons employed by the commission, shall, upon demand, have the right to inspect or examine the books, papers, accounts, documents, plant, property and facilities of any public utility and to examine under oath any officer, agent or employe of such public utility in relation to its business and affairs; provided, that any person other than one of the commissioners shall produce when so requested his authority to make inspections or examinations under the hand of a commissioner or of the secretary and under the seal of the commission.

75. Commission May Require Production of Books. The commission by order may require any public utility or any officer or agent thereof to produce within the state at such time and place as it may designate any accounts, records, memoranda, books or papers kept in any office or place without or within the state or verified copies thereof in order that an examination thereof may be made by the commission or by any person under its direction.

76. Summary Investigation. Whenever the commission shall believe that an investigation of any act or omission to act, accomplished or proposed, or an investigation of any rate, service, facility or service regulation of any public utility should be made in order to secure compliance with the provisions of this act and orders of the commission it may of its own motion summarily investigate the same.

77. Complaints. (a) Any public utility, or any person served or claiming the right to be served thereby, or any municipality, or the attorney general may complain to the commission of any thing, actual or proposed, done or omitted to be done in violation of any provision of this act or of an order of the commission, and it shall be the duty of the commission to entertain such complaint and to proceed therewith as provided for elsewhere in this act.

(b) Upon any such complaint alleging that any rate is unjust, unreasonable, unjustly discriminatory, unduly preferential, or otherwise or in any respect in violation of any provision of this act, the commission may proceed to investigate the matters complained of as provided for elsewhere in this act.

(c) Upon any such complaint alleging that any service or service regulation is unjustly discriminatory or unduly preferential, or that any service or facility is inadequate or unsafe, or that any service regulation is unjust or unreasonable, or that any service, facility or service regulation is otherwise or in any respect in violation of any provision of this act, the commission may proceed to investigate the matters complained of as provided for elsewhere in this act.

78. Scope of Investigations. In conducting any investigation pursuant to the provisions of this act, the commission may investigate, consider and determine such matters as the cost or value, or both, of the property and business of any public utility, used and useful for the convenience of the public, and all matters affecting or influencing such cost or value; the operating statistics of any public utility, both as to revenues and expenses and as to the physical features of operation, in such detail as the commission may deem advisable; the physical characteristics and geographical limits of the locality or area affected by the service of a public utility; and such other matters as may have a bearing upon the subjects under investigation. Every public utility shall, at the request of the commission, furnish all available information in aid of such investigation.

79. Commission May Make Orders. Whenever after investigation in accordance with the provisions of this act, the commission shall be of the opinion that any provision or requirement of this act or any order of the commission is being, has been, or is about to be violated, it may make and enter of record an order in the premises, specifying the actual or proposed acts or omissions to act which constitute such real or proposed violation, and requiring that such violation be discontinued or rectified, or both, or that it be prevented. No order, however, shall be made by the commission which requires the change of any rate or service, facility or service regulations except as otherwise specifically provided, unless or until a public hearing has been held in accordance with the provisions of this act.

80. Determination of Reasonable Rates. If upon hearing and investigation any rate shall be found by the commission to be unjust, unreasonable, unjustly discriminatory or unduly preferential or otherwise or in any respect in violation of any provision of this act, the commission may fix and order substituted therefor such rate as it shall determine to be just and reasonable and in compliance with the provisions of this act. Such rate so ascertained, determined and fixed by the commission, shall be charged, enforced, collected and observed by the public utility for a period of time fixed by the commission of not more than three years.

81. Commission May Prescribe Service or Facilities. If upon hearing and investigation any service or service regulation of any public utility shall be found by the commission to be unjustly discriminatory or unduly preferential, or any service or facility shall be found to be inadequate or unsafe, or any service regulation shall be found to be unjust or unreasonable, or any service, facility or service regulation shall be found otherwise or in any respect to be in violation of any provision of this act, the commission may prescribe and order substituted therefor such service, facility or service regulation as it shall determine to be adequate and safe, or just and reasonable, as the case may be and otherwise in compliance with the provisions of this act. It shall be the duty of the public utility to comply with and conform to such determination and order of the commission.

82. Division of Expense Incurred by Utilities Rendering Joint Service. Whenever any order of the commission involves expenditures of any sum or sums by public utilities rendering any

joint service or services and the public utilities affected thereby shall fail to agree upon the division or apportionment thereof within a reasonable time after the service of such order, the commission may issue a supplemental order declaring the apportionment or division of such expense.

83. Publicity of Commission Records. All reports, records, and accounts in the possession of the commission shall be open to inspection by the public at all times, except as otherwise provided in this act or as ordered by the commission and under rules prescribed by the commission.

84. Fees. The commission is authorized to fix and establish a schedule of fees to be charged for copies of opinions, orders, reports and other records of the commission and certifications under the seal of the commission. All fees received by the commission shall be turned over to the state treasurer at monthly intervals.

85. Annual Report to Governor. Annually on or before the first day of February the commission shall report to the governor for transmittal to the legislature its proceedings for the preceding year. Such report shall set forth in such detail as the commission may deem expedient all proceedings and investigations of the commission during such period and shall contain abstracts of the annual reports of public utilities prepared by the commission. It shall also contain recommendations of the commission for new legislation and any other matters the commission desires to call to the attention of the governor and legislature. A sufficient number of copies of this report to accommodate all reasonable requests therefor shall be printed.

86[1]. Incidental Powers. In addition to the powers herein specifically granted, the commission shall have such implied or incidental powers as may be necessary and proper effectually to carry out, perform and execute all the powers so granted.

[1] Numbers 87 to 100, inclusive, are not assigned to sections.

ARTICLE IV.

REGULATION OF STOCK AND BOND ISSUES.

101. Right to Issue Stock and Create Lien a Special Privilege. The power of public utilities to issue stocks, stock certificates, bonds, notes and other evidences of indebtedness, in case of public utilities incorporated under the laws of this state, and to create liens on property in this state, in case of public utilities incorporated under the laws of any state, is a special privilege, the right of supervision, regulation, restriction and control of which is and shall continue to be vested in the state, and such power shall be exercised as provided by law and under such rules and regulations as the commission may prescribe.

102. State Does Not Guarantee Stocks, Bonds, etc. No provision of this act and no deed or act done or performed under or in connection therewith shall be held or construed to obligate the state of ———————— to pay or guarantee in any manner whatsoever any stock, stock certificate, bond, note or other evidence of indebtedness authorized, issued or executed under the provisions of this or any other act, or to pay or guarantee in any manner whatsoever any interest or dividends thereon.

103. Purpose for Which Stocks, Bonds, etc., May be Issued. Subject to the provisions of this act and of the order of the commission issued as provided in this act, a public utility may issue stocks, stock certificates, bonds, notes and other evidences of indebtedness payable at periods of more than 12 months from the date thereof, when necessary and reasonably required for the following purposes and no others, viz.,

(a) Acquisition of property.

(b) Construction, extension, betterment, or improvement of or addition to its facilities.

(c) Discharge or lawful refunding of its obligations.

(d) Reimbursement of moneys actually expended from income or from any other moneys in the treasury of the public utility not, directly or indirectly, secured by or obtained from the issue of stocks, stock certificates, bonds, notes or other evidences of indebtedness of such public utility, within five years next prior to the filing of an application with the commission for the

required authorization, for any of the aforesaid purposes, not including maintenance of service, replacements and substitutions (if the applicant shall have kept its accounts and vouchers for such expenditures in such manner as to enable the commission to ascertain the amount of moneys so expended and the purposes for which such expenditures were made and the sources of the funds in the treasury of the public utility applied to such expenditures.)

Provided, and not otherwise, that such public utility in addition to the other requirements of law shall first have secured from the commission an order authorizing such issue as provided in this act.

104. Issues not to Exceed Amounts Reasonably Required. No public utility shall issue any stocks, stock certificates, bonds, notes or other evidences of indebtedness to an amount exceeding that which may be necessary and reasonably required to enable such public utility to perform its duty to the public and for the purpose for which such issue of stocks, stock certificates, bonds, notes or other evidences of indebtedness may be authorized.

105. Stock Issued at Par Only. No public utility shall issue any stock or stock certificate except in consideration of money, or of services or property at the true money value thereof as found and determined by the commission, actually received by such public utility equal to or in excess of the face value of such stock or stock certificate.

106. Bonds May Be Issued Below Par. No public utility shall issue any bonds, notes or other evidences of indebtedness, except in consideration of money, or of services or property at the true money value thereof as found and determined by the commission, actually received by such public utility equal to or in excess of the true money value of the bonds, notes or other evidences of indebtedness issued therefor; and in no case shall the money or the true money value of the services or property as found and determined by the commission be less than 75 per cent. of the face value of the bonds, notes or other evidences of indebtedness.

107. Refunding Debt Discount and Expense. The commission may require every public utility that issues any bonds, notes or other evidences of indebtedness for an amount or amounts (in money or in property or services at the true money value thereof

as found and determined by the commission) less than the par value thereof to provide for the amortization of the discount and all expenses connected with the issuance of said bonds, notes or other evidences of indebtedness during a period of time fixed by the commission, and thereafter no bonds, notes or other evidences of indebtedness issued for the purpose of paying, refunding, retiring or discharging any such bonds, notes or other evidences of indebtedness shall be issued to pay, refund, retire or discharge such discount and expenses to an amount greater than the commission shall have determined to be reasonable and consistent with the plan of amortization adopted. No such public utility shall declare any dividends from the earnings of any year until all amortization of debt discount and expenses accrued and due up to that time has been provided for.

108. Relative Proportions of Stocks and Bonds. The amount of bonds, notes and other evidences of indebtedness which any public utility may issue shall bear a reasonable proportion to the amount of stock and stock certificates issued by such public utility, due consideration being given to the nature of the business in which the public utility is engaged, its credits, earnings and prospects, and to the effect which such issue will have upon the management and efficiency of operation of the public utility, so as to secure an adequate relative amount of financial interest and risk on the part of the stockholders in the public utility.

109. What Order Shall Show. The order of the commission authorizing the issue of any stocks, stock certificates, bonds, notes or other evidences of indebtedness, payable at periods of more than 12 months from the date thereof, shall state:

(a) The amount and character of the authorized issue.

(b) The purpose or purposes to which the issue or the proceeds thereof are to be applied.

(c) That, in the opinion of the commission, the money, property or services to be procured or paid for by such issue is necessary and reasonably required to enable the public utility to perform its duty to the public and for the purpose or purposes specified in the order.

(d) That, in the opinion of the commission, the proposed expenditures for such purpose or purposes are not in whole or in part reasonably chargeable to income, except as otherwise permitted by the order.

(e) That the value of the property, services or other consider-

ation as found and determined by the commission, for which, in whole or in part, such issue is to be made, is equal to or in excess of the par value of the stocks or stock certificates, or the value of the bonds, notes and other evidences of indebtedness to be issued therefor.

(f) That, in the case of bonds, notes and other evidences of indebtedness, the amount of all bonds, notes and other evidences of indebtedness, including those just authorized, bears a reasonable proportion to the total amount of stocks and stock certificates outstanding.

(g) The terms and conditions upon which the issue is authorized.

110. Authority of Commission. The commission may by order authorize the issue of stocks, stock certificates, bonds, notes or other evidences of indebtedness, in the amount applied for or in a lesser amount, or in a greater amount, or not at all, and may attach to the exercise of this authority such terms and conditions as it may deem just, reasonable or proper.

111. Character of Investigation by Commission. For the purpose of enabling it to determine whether the proposed issue complies with all provisions of law and whether it should be authorized, the commission may determine the true money value in detail of the property or services, for which it is proposed to issue, in whole or in part, such stocks, stock certificates, bonds, notes or other evidences of indebtedness, and shall make such inquiry or investigation, hold such hearings and examine such witnesses, books, papers, documents or contracts as it may deem of importance in enabling it to reach a determination. The commission may also make a valuation of all the property of the public utility if it deems it pertinent to the inquiry or investigation, and may require such utility to furnish such statements, information and facts as the commission may deem pertinent.

112. Limitation of Application of Article. The provisions of this act requiring public utilities to secure the approval of the commission before issuing any stocks, stock certificates, bonds, notes or other evidences of indebtedness, shall not apply to stocks, stock certificates, bonds, notes or other evidences of indebtedness lawfully issued before this act becomes a law nor to any mortgage, deed of trust or other similar instrument lawfully executed and delivered before this act becomes a law.

113. Utilities Authorized to Issue Notes for a Year. A public utility may issue notes for proper purposes and not in violation of any provision of this or of any other act, payable at periods of not more than one year from the date thereof, without the approval of the commission. A public utility may issue like notes payable at periods of not more than one year from the date thereof to pay, retire, discharge or refund, in whole or in part, any such note or notes authorized by this section to be issued without the approval of the commission, and may continue from time to time for a period not exceeding in the aggregate five years from the date of issue of the first note or notes to issue notes of the same character to pay, retire, discharge or refund, in whole or in part, notes previously issued for the same purpose under the authority of this section. Except as otherwise in this section expressly authorized, no such notes payable at periods of not more than one year from the date thereof shall, in whole or in part, directly or indirectly, be paid, retired, discharged or refunded by any issue of stocks, stock certificates, bonds, notes or other evidences of indebtedness of any term or character, or from the proceeds thereof, without the approval of the commission.

114. Issues Previously Authorized. The provisions of this act shall apply to all stocks, stock certificates, bonds, notes and other evidences of indebtedness of any public utility, other than notes payable at periods of not more than one year from the date thereof, issued by any public utility after this act becomes a law upon the authority of any articles of incorporation or amendments thereto, or vote of the stockholders or directors filed, taken or had before this act becomes a law.

115. Application of Proceeds of Issues. No public utility shall without the consent of the commission apply the issue, or any part thereof, of any stock, stock certificate, bond, note or other evidence of indebtedness, or any proceeds thereof, to any purpose not specified in the commission's order, or to any purpose so specified in excess of the amount authorized for such purpose, or issue or dispose of the same on terms or conditions different from those specified in such order, or a modification thereof. Every term, condition, provision and requirement contained in such order shall be enforced, fulfilled and obeyed by the public utility affected.

116. Duty of Utilities to Account to Commission for Disposition of Proceeds. The commission may require any public utility to

account for the disposition of the proceeds of all issues under the provisions of this act of stocks, stock certificates, bonds, notes and other evidences of indebtedness, in such form and detail as it may deem advisable, and to do and perform any and all acts necessary to carry out the provisions of this act.

117. Contract for Consolidation or Lease Shall Not Be Capitalized. No contract for consolidation, merger or lease shall be capitalized, nor shall any public utility hereafter issue any bonds, notes or other evidences of indebtedness against any contract for consolidation, merger or lease; but this shall not prevent the granting under mortgage or deed of trust with the approval of the commission of any contract for consolidation, merger or lease.

118. Franchises Not to Be Capitalized. No public utility shall capitalize, directly or indirectly, any franchise to be a corporation, or any other franchise, right or privilege, or any right to own, operate or enjoy any such franchise, right or privilege whatsoever, in excess of the amount (exclusive of any tax or annual charge) actually paid to the state or to a political subdivision thereof as a consideration for the grant of such franchise, right or privilege; and in determining the value of the property of a public utility for the purposes of this act, no franchise, right or privilege granted to a public utility by the state or by a political subdivision thereof shall be appraised, fixed or considered at any greater amount or value than the sum paid therefor into the public treasury of the state or of the political subdivision granting the same (exclusive of any tax or annual charge).

119. Capital Stock of Consolidated Corporation. The capital stock, stock certificates and debt of a public utility resulting from merger or formed by consolidation of two or more public utilities shall not exceed the value of the properties merged or consolidated as found and determined by the commission.

120. Reorganized Utilities. Any public utility which shall have, or may hereafter, become the owner or assignee of any right, power, privilege or franchise of any other public utility, in whole or in part, directly or through an intermediate grantor or grantors, under a deed of trust, mortgage sale, sale in bankruptcy proceedings or sale under any judgment, order, decree or proceedings of any court, including the courts of the United States, shall be subject to the same power of supervision, regulation, restriction

and control that applies to other public utilities under the provisions of this act.

121.[1] Impairment of Capital. If the commission determines that the capital of a public utility has been or is being impaired or that stocks, stock certificates, bonds, notes or other evidences of indebtedness have been issued in whole or in part for purposes which should have been charged to income, the commission may by order require such public utility to set aside within a reasonable time a sum of money annually or monthly out of income or from any other moneys in the treasury of the public utility not, directly or indirectly, secured or obtained from the issue of stocks, stock certificates, bonds, notes or other evidences of indebtedness of such public utility and may prescribe the period for which such amount shall be set aside, the use to be made of such funds and such other conditions and requirements as it may determine are just, reasonable or proper.

[1] Numbers 122 to 130, inclusive, are not assigned to sections.

ARTICLE V.

INTERCORPORATE RELATIONS.

131. Manner of Assignment, Lease, Mortgage, etc., of Property. No public utility shall, after this act becomes a law, assign, transfer, lease, mortgage, grant in trust, sell, or otherwise dispose of or encumber, directly or indirectly, by any means whatsoever, the whole or any part of its franchises, plant, equipment or other property necessary or useful in the performance of its duties to the public without first having secured from the commission an order approving such assignment, transfer, lease, mortgage, grant in trust, sale, disposal or encumbrance.

Nothing in this section shall be construed to prevent the sale, lease, assignment or transfer by any public utility of any plant, equipment or other property (exclusive of any franchise, permit, right or privilege to own or operate a plant of a public utility), which is not necessary or useful in the performance of its duties to the public, and any property sold, leased, assigned or transferred by a public utility without the approval of the commission, shall be conclusively presumed to be property which is not useful or necessary in the performance of its duties to the public as to any purchaser of such property in good faith for value.

132. Manner of Merger or Consolidation. No public utility shall, by any means whatsoever, direct or indirect, merge or consolidate its franchises, plant, equipment or other property with that of any other public utility without first having secured from the commission an order approving such merger or consolidation.

133. Unauthorized Transfers or Mergers Void. Every assignment, transfer, lease, mortgage, deed of trust, sale, or other disposition or encumbrance of the whole or any part of the franchises, plant, equipment or other property necessary or useful in the performance of its duty to the public of any public utility, or any merger or consolidation thereof, made otherwise than in accordance with the provisions of this act and of the order of the commission authorizing the same, shall be void.

134. Authority Not to Validate Lapsed Franchises. The authorization of the commission to assign, transfer, lease, mortgage, sell or otherwise dispose of or encumber a franchise, permit, right or privilege under section 131 of this article, or to merge or consolidate under section 132 of this article, shall not be construed to revive or validate any expired, forfeited or invalid franchise, permit, right or privilege, or to enlarge or add to the powers and privileges contained in the grant of any franchise, permit, right or privilege, or to waive any forfeiture.

135. Manner of Contracting for Operation of Works. No public utility shall make any contract, agreement or arrangement, written or oral, with any other public utility for the operation of its plant, equipment or other property, or any part thereof, so as to relieve such public utility from the performance of its duty to the public, without first having secured from the commission an order approving the same.

136.[1] **When Approval is to be Given.** Whenever application is made to the commission for its approval of—

(**a**) The assignment, transfer, lease, mortgage, granting in trust, sale, disposal or encumbrance of any property of a public utility;

(**b**) Any merger or consolidation;

(**c**) Any contract, agreement or arrangement for the operation of the plant, equipment or other property of a public utility—

The commission shall withhold its approval if it finds that

[1] Numbers 137 to 150, inclusive, are not assigned to sections.

the exercise of such privilege is inconsistent with the public interest or detrimental thereto. The commission shall make such order in the premises as it may deem proper and may attach such terms and conditions to the exercise of the privilege authorized as it may deem reasonable and proper.

ARTICLE VI.

RATES.

(a) Requisites of Lawful Rates.

151. Reasonable Rates, Rules and Regulations. All rates shall be just and reasonable, and all unjust and unreasonable rates are prohibited.

152. Discrimination Prohibited. No public utility shall directly or indirectly, by any device whatsoever, or in any wise, charge, demand, collect or receive from any person a greater or less or different compensation for any service rendered or to be rendered by such public utility than is charged, demanded, collected or received by such public utility from any other person for a like and contemporaneous service under substantially similar circumstances and conditions.

153. Departure from Published Schedules. No public utility shall directly or indirectly, by any device whatsoever, or in any wise, charge, demand, collect or receive from any person a greater or less or different compensation for any service rendered or to be rendered by such public utility than that prescribed in the schedules of such public utility then filed and published in the manner provided in this act nor shall any person receive or accept any service from a public utility for a compensation greater, less or in any way different from that prescribed in such schedules.

154. Furnishing Part of Facilities. No public utility shall demand, charge, collect or receive from any person less compensation for any service rendered or to be rendered by such public utility in consideration of the furnishing by said person of any part of the facilities incident to such service; provided, nothing herein shall be construed as prohibiting any public utility from renting any facilities incident to service, and paying a reasonable rental therefor.

155. Undue Preference or Advantage Prohibited. No public utility as to rates shall make or grant any undue or unreasonable preference or advantage to any person, locality or particular description of service, or subject any person, locality or particular description of service to any undue or unreasonable prejudice or disadvantage.

156. Service at Reduced Rates. Nothing in this act shall prohibit any railroad from furnishing free or reduced rate transportation of the person or of property over its line, to officers, attorneys, surgeons, directors or employes of such railroad, or dependent members of their families, or to former employes of such railroad or dependent members of their families where such employes are pensioned, or have become disabled in the service of such carrier or are unable from physical disqualification to continue in such service; nor prohibit the exchange of transportation of the person or of property by such railroad with officers, attorneys, surgeons, directors or employes of other railroads; nor prohibit any telephone or telegraph company from furnishing service free or at reduced rates to officers, attorneys, surgeons, directors or employes of such telephone or telegraph companies or of other telephone or telegraph companies when service is required by such officers, attorneys, surgeons, directors or employes in the performance of their duties; nor prohibit telephone, telegraph and express companies from entering into contracts with railroads for the exchange of services; provided, that no service of any kind shall be furnished free or at reduced rates by any public utility, or jointly by any public utilities, to any candidate for or incumbent of any office or position under the constitution or laws of this state or under the ordinances of any municipality thereof.

(b) Establishment and Change of Rates.

157. Establishment of Rates by Utility. Every public utility shall establish, observe and enforce just and reasonable rates.

158. Commission May Suspend Schedules. To enable it to make such an investigation as in its opinion the public interest requires, the commission, at its discretion, for a period not exceeding three months, may suspend the operation of any rate filed with the commission under the provisions of this article in substitution of any rate then lawfully in effect. Unless as a result of its investigation the commission otherwise orders before the termination of such period of three months, such rate shall there-

upon become effective. The commission may make any order in the premises which it is authorized by any of the provisions of this act to make in an investigation on complaint or on its own motion without complaint.

159. Establishment of Joint Rates. After hearing on complaint, or on its own motion without complaint, the commission may establish joint services to be participated in by two or more public utilities and may ascertain, determine and fix for such services just and reasonable rates, which shall be charged, enforced, collected and observed by such public utilities.

160. Division of Joint Rates. Whenever the public utilities involved shall fail to agree among themselves upon the apportionment or division of any joint rate established by the commission or ordered by the commission substituted for any joint rate found to violate any provision of this act, the commission may issue a supplemental order declaring the apportionment or division of such joint rate.

161. Automatic Adjustment of Charges. Any public utility may enter into an arrangement for a fixed period, not to exceed five years, for the automatic adjustment of charges or character of services performed in relation to the profits to be realized by such public utility, provided, that a schedule of such automatic adjustment of charges or services shall first have been approved by the commission.

162. Interstate Rates. The commission may investigate all existing or proposed interstate rates, where any act under such rates shall or may take place within this state. When such rates are in the opinion of the commission unjust, unreasonable, unjustly discriminatory, unduly preferential or otherwise or in any respect in violation of the provisions of the act to regulate commerce or of any other act of congress or in conflict with the rules and orders of the interstate commerce commission or of any other department of the federal government, the commission may apply for relief by petition or otherwise to the interstate commerce commission or to any other department of the federal government or to any court of competent jurisdiction.

163. Emergency Rates. The commission shall have power, when deemed by it necessary to prevent injury to the business or interests of the public or of any public utility in this state, in case of any emergency to be judged of by the commission, temporarily to

alter, amend or suspend without a public hearing any one or more of the rates of any public utility in the state; such alteration, amendment or suspension shall be effective not longer than 30 days and shall not be renewed nor extended without a hearing and investigation after reasonable notice to the public utility affected thereby.

(c) *Publicity.*

164. Filing of Schedules. Within a time to be fixed by the commission, every public utility shall file with the commission schedules showing all rates for every service rendered or to be rendered by it.

165. Filing of Joint Schedules. Where two or more public utilities are engaged in performing joint service, schedules of the rates for such joint service shall be filed with the commission by one of such public utilities; and each of the public utilities party to such joint service, other than the one filing such schedules, shall file with the commission such evidence of concurrence therein, or acceptance thereof, as may be required or approved by the commission.

166. Posting of Schedules. Copies, for the use of the public, of all such schedules as are required by this act to be filed with the commission, shall be posted in each public office, not including public pay stations of telephone utilities, of every public utility issuing or participating in such schedules, in such place as to be accessible to the public and conveniently inspected, 30 days before they are to take effect, unless a shorter time is permitted by the commission; provided, that in lieu of posting its entire schedules at each office, any public utility may file and keep posted at each office schedules of such rates as on application the commission shall determine to be required in the public interest.

167. Changes in Schedules. All changes made in any rate of any public utility shall be filed with the commission and posted for the use of the public in the manner herein prescribed for the filing and posting of schedules.

168. Form of Schedules. The commission may determine and prescribe the form in which the schedules required by this act to be filed with the commission and to be kept open to public inspection, and all changes therein, shall be prepared and arranged, and may change the form from time to time if it shall be found expedient; provided, however, that the commission shall endeavor

to have such form or forms prescribed by it conform as far as practicable to any similar form or forms prescribed by the interstate commerce commission.

169.[1] **Filing of Contracts, Agreements and Arrangements.** Every public utility shall file with the commission copies of such contracts, agreements or arrangements with other public utilities to which it may be a party as the commission may designate, and every public utility when and as required shall exhibit to the commission any contract, agreement or arrangement with any person or copies thereof. Every public utility shall, whenever required by the commission, file with the commission statements of passes, tickets, mileage books or franks, issued by such public utility free or at rates lower than those open to the public in general, or of other authorization of service free or at reduced rates, said statements to cover such periods of time and such classes of service, and to include such information connected with the issuance thereof, as the commission may prescribe; provided, that no contract, arrangement or authorization of a public utility herein referred to shall be open to or inspected by the public without a special order of the commission to that effect.

[1] Numbers 170 to 200, inclusive, are not assigned to sections.

ARTICLE VII.

ADEQUACY AND SAFETY OF SERVICE.

201. Service Required to be Adequate and Safe. The service and facilities of every public utility shall be adequate and safe and every service regulation shall be just and reasonable.

202. Unjust Discrimination in Service Prohibited. It shall be unlawful for any public utility to make, or to permit to exist, any unjust discrimination or undue preference with respect to its service, facilities or service regulations.

203. Standards of Service. The commission may prescribe adequate standards of service rendered or to be rendered by any public utility, and may prescribe regulations for the examination and testing of such service and for the measurement thereof.

204. Inspection of Service by Commission. The commission may provide for the inspection of the manner in which any public utility conforms to regulations prescribed by the commission for the examination and testing of its service, and for the measure-

ment thereof, and the commission may examine and test the service of any public utility and the measurement thereof.

205. Meter Accuracy. The commission may prescribe rules, regulations and standards to secure the substantial accuracy of all meters and appliances for measurement, and every public utility is required to comply therewith.

206. Inspection of Meter Accuracy. The commission may provide for the inspection of the manner in which any public utility complies with the rules, regulations and standards fixed by the commission to secure the accuracy of all meters and appliances for measurements, and the commission may examine and test any and all meters and appliances for measurements under such rules and regulations as it may prescribe, and at all inspections and tests made in pursuance of complaints representatives of the public utility complained of and of the complainant may be present.

207. Measuring Appliances; Testing; Fees. Any consumer or user may have any meter or appliance for measurement tested by the commission upon payment of fees fixed by the commission. The commission shall declare and establish reasonable fees to be paid for examining and testing such appliances on the request of consumers or users, the fee to be paid by the consumer or user at the time of his request, but to be paid by the public utility and refunded to the consumer or user if the measuring appliance be found unreasonably defective or incorrect to the disadvantage of the consumer or user.

208. Standardization of Measuring Instruments. The commission may make such provisions as it deems desirable for the calibration, checking or standardization to secure their accuracy of measuring instruments used by any public utility and in so doing it shall conform as closely as practicable to the standards and methods of standardization of the National Bureau of Standards.

209. Entry Upon Premises. The commission, or its representatives duly accredited, shall have power to enter upon any premises occupied by any public utility for the purpose of making the examinations and tests provided for in this article, and to set up and use on such premises any apparatus and appliances and occupy reasonable space therefor.

210. Joint Use of Facilities. Whenever after hearing and investigation the commission shall find that public convenience and necessity require the use by one public utility of the conduits, subways, tracks, wires, poles, pipes or other property or equipment, or any part thereof along any street or highway, whether on, over or under such street or highway, belonging to another public utility, and that such use will not prevent the owner or other users thereof from performing their public duties nor result in serious injury to such owner or other users of such conduits, subways, tracks, wires, poles, pipes or other property or equipment, or in any substantial detriment to the service, or danger to the public or employes, and that such public utilities have failed to agree upon such use, or the terms and conditions or compensation for the same, the commission may by order direct that such use be permitted and prescribe a reasonable compensation and reasonable terms and conditions for such joint use.

211. Telephone and Telegraph Physical Connection. Whenever after hearing and investigation the commission shall determine that public convenience and necessity require a physical connection for the establishment of a continuous line of communication between any two or more public utilities for the conveyance of telephone or telegraph messages, and that such physical connection will not prevent the owners of any part of such proposed continuous line of communication from performing their public duties nor result in serious injury to such owners of any part of the proposed continuous line of communication, the commission may by order ascertain, determine and fix the reasonable terms and conditions of such physical connection, and all rules and regulations, including the charge that shall be made to the public for the use of such continuous line and the division of the charge between such two or more public utilities, and the division or apportionment of the cost of making such physical connection between such public utilities, and it shall be the duty of such public utilities thereafter to conform to such order of the commission.

212. Accidents Reported to Commission. Every public utility shall report to the commission, under rules and regulations prescribed by the commission and harmonizing in so far as practicable with those of the interstate commerce commission and of any other department of this state, every accident occurring upon the property of any public utility or directly or indirectly arising from or connected with the maintenance or operation of the plant, equipment, appliances, apparatus, property or facilities of such public utility resulting in loss of life or injury to

person or property; provided, that whenever any accident occasions the loss of life or limb to any person, such public utility shall straightway advise the commission of the fact by the speediest available means of communication. No such report when filed with the commission shall be open to public inspection unless specially authorized by the commission.

213.[1] **Commission to Investigate Accidents.** The commission shall investigate the cause of all such accidents resulting in loss of life or injury to person or property as in the judgment of the commission require investigation by it, and the commission shall have power to make such recommendation with respect thereto as in its judgment may be just and reasonable.

[1] Numbers 214 to 229, inclusive, are not assigned to sections.

ARTICLE VIII.

REGULATION OF ACCOUNTS AND REPORTS.

230. **Application to Municipalities.** The provisions of this article, and all penalties provided in this act for the violation of such provisions shall apply and are hereby made applicable to any municipality which owns, leases or controls any plant, property or equipment for any of the purposes described and specified in paragraph (a) of section 15 of this act, and the term "public utility," when used in the provisions of this article and in other such provisions of this act, shall mean and include every such municipality. It shall be the duty of every such municipality, after this act takes effect, to comply with such provisions of this act and with any order of the commission made in pursuance thereof.

231. **Commission to Prescribe Uniform Accounts.** The commission shall prescribe, establish and order a system of accounts for each public utility, which system shall be uniform for all public utilities of the same kind and class, and may make such regulations regarding the accounts and the statistics of each public utility for the purpose of insuring uniform and correct books of account and record, as in the judgment of the commission may be necessary to carry out any of the provisions of this act.

232. **Commission May Classify Utilities.** The commission may classify public utilities of the same kind in respect to the system of accounts and regulations regarding accounts and statistics, and

in such classification shall consider the ability of public utilities to comply with its requirements as well as the public interests involved.

233. **Commission May Alter Requirements.** The commission may from time to time alter, amend or repeal any system of accounts and any regulations regarding accounts and statistics. Notice of alterations or amendments shall be given to the public utilities affected thereby at least six months before the beginning of a fiscal year.

234. **Accounts Kept in State.** Every public utility furnishing service within the state shall maintain an office located in the state, in which shall be kept such books of account and such records as the commission shall require to be kept in the state.

235. **Depreciation Reserve Required.** Every public utility shall carry a proper and adequate depreciation account.

236. **Forms of Account for Depreciation.** The commission shall prescribe rules, regulations and forms of accounts regarding such depreciation account which public utilities shall carry into effect.

237. **Commission May Fix Depreciation Rates.** The commission may in its discretion from time to time ascertain and determine and by order fix the proper and adequate rates of depreciation on the several classes of property of each public utility.

238. **Use of Depreciation Reserve.** The moneys set aside by a public utility for depreciation shall be expended, until required for renewals or replacements, only for purposes chargeable to capital according to the system of accounts prescribed by the commission, for the retirement of its obligations and for such other purposes and under such rules and regulations as the commission may from time to time prescribe.

239. **Provision for Impairment of Capital.** The commission, in its discretion, whenever the circumstances require, may direct that any public utility shall make provision from income from other than capital sources, under the system of accounts prescribed, for impairment of capital due to depreciation and other causes, which impairment was not provided for through charges against revenue or otherwise at the time of its occurrence or subsequently, and it shall be the duty of such public utility to comply with such direction.

240. Utilities to Conform to System. (a) Every public utility shall keep its books, papers and records accurately and faithfully according to the system of accounts and regulations prescribed by the commission, and shall comply with all directions of the commission relating thereto. It shall be unlawful for any public utility to keep any general ledger or balance sheet accounts other than those prescribed or approved by the commission or by the interstate commerce commission.

(b) Every public utility when required by the commission shall file with the commission a certification by a public accountant as to the compliance by the public utility with the system of accounts and regulations regarding accounts and statistics prescribed by the commission. The commission, in its discretion, may require that the accountant employed by a public utility for such certification shall not be a shareholder, officer or other permanent or regular employe of such public utility.

241. Commission May Audit Accounts. The commission may provide for the examination and audit of all accounts of public utilities. If it shall determine that any expenditures or receipts have been improperly charged or credited it may order the necessary changes in the accounts.

242. Utilities Required to Report to Commission. Every public utility, when and as required by the commission, shall file with the commission such annual, monthly or other regular reports, or special reports, and such other information as the commission may desire. When required by the commission, such reports and information shall be certified under oath by a duly authorized officer having knowledge of the matters contained therein, and the commission may in addition thereto at its discretion require a certification by a public accountant. The commission may at any time require from any public utility specific answers to any questions upon which it may desire information. The commission may in its discretion grant extensions of the time within which reports and information are required to be filed. Annual reports, however, shall be filed within two months after the close of the fiscal year and any extensions of such period shall not exceed in the aggregate 30 days.

243. Commission To Prepare Blank Forms. The commission shall prepare and distribute to every public utility blank forms for any report or reports required under this act.

244.[1] **Defective Reports.** When any report is erroneous or defective the commission may require the public utility to amend such report within a time to be prescribed by the commission.

[1] Numbers 245 to 270, inclusive, are not assigned to sections.

ARTICLE IX.

FRANCHISES.

271. Future Franchises Granted to Public Utilities. No license, permit, or franchise to construct, own or operate any plant or facility of a public utility shall be hereafter granted or transferred to any grantee or transferee other than a corporation duly incorporated or licensed or permitted to do a public utility business under the laws of this state, except in case of a person claiming by, through or under a valid mortgage or deed of trust of any such license, permit or franchise or a purchaser at a judicial sale; and any such person or purchaser shall be subject to the provisions of this act so far as applicable.

272. Certificate Before Furnishing Service. No public utility after this act becomes a law shall furnish any new service in this state or begin the construction of any new plant or new facility in any street or public place until it shall have obtained a certificate from the commission that public convenience and necessity require the furnishing of such new service or the construction of such new plant or new facility.

273. Exercise of Franchises Previously Granted. No public utility shall exercise any right or privilege in any place or territory under any franchise or permit heretofore granted but not heretofore actually exercised in such place or territory or the exercise of which therein has been suspended for more than one year without first having obtained from the commission a certificate that public convenience and necessity require the exercise of such right or privilege.

274. Certificate of Convenience and Necessity. Whenever after hearing the commission determines that any new construction or the furnishing of any new service by a public utility will promote the public convenience and necessity it shall have the power to issue a certificate to that effect, and in such certificate may limit and define the territory in which such construction may be made or the area in which such service may be supplied.

275. Authority Exercised Within One Year. Unless exercised within a period designated by the commission but not exceeding one year from the grant thereof, exclusive of any delay due to the order of any court or to failure to obtain any grant or consent, authority conferred by a certificate of convenience and necessity issued by the commission shall be null and void.

276. Franchises Subject to Regulation by Commission. Every license, permit or franchise, hereafter granted to any public utility by the state or by any municipality and all future contracts, ordinances, rules, regulations and orders entered into or made by any municipality relating to the use or enjoyment of rights and franchises granted to any public utility, shall be subject to the exercise by the commission of any and all of the powers of regulation provided for in this act.

277. Provisions and Duration of Future Grants. Every license permit or franchise hereafter granted to a public utility by a municipality shall be so granted subject to the provisions of this act and to the authority of the commission to regulate and supervise such public utility as in this act provided; and every such license, permit or franchise which does not provide for the ultimate acquisition of the plant or facility by the municipality shall be not limited in time but shall continue in force until such time as the municipality shall exercise its right to acquire, as provided in this act, or until it shall be otherwise terminated according to law.

278. Consent to Future Purchase; New Franchise. Any public utility rendering, or entitled to render, service in any municipality under a license, permit or franchise granted before this act takes effect may file with the commission and with such municipality its consent to a future purchase, taking and operation by a municipality in accordance with the provisions of this act of its property acquired, constructed or operated in pursuance of such license, permit or franchise and actually used and useful for the convenience of the public. By the act of filing such consent the public utility may have and receive a franchise subject to the provisions of this act and to the terms and conditions of any valid contract between the public utility and the municipality to furnish service in the same municipality area or territory of the kind or class which it is then lawfully furnishing under such license, permit or franchise granted before this act takes effect A franchise so obtained however, shall

be subject to alterations, amendment or repeal by act of the legislature.

279. Future Grants; Acceptance: Implied Consent. Any public utility accepting or operating under any license, permit or franchise hereafter granted shall, by acceptance of any such license, permit or franchise, be deemed to have consented to a future purchase, taking and operation by a municipality in accordance with the provisions of this act of its property acquired, constructed or operated in pursuance of such license, permit or franchise and actually used and useful for the convenience of the public, for the just compensation and under the terms and conditions of purchase and sale determined by the commission, and shall thereby be deemed to have waived the right of requiring the necessity of such taking to be established by the verdict of a jury, and to have waived all other remedies and rights relative to condemnation, except such rights and remedies as are provided in this act.

280. Municipalities; Powers; Acquiring and Operating Plants. (a) Any municipality shall have the power, subject to the provisions of this act, to acquire or to construct and to operate a public utility plant, property or facility for any of the purposes described in paragraph (a) of section 15 of this act, hereinafter termed a municipal plant.

(b) Any municipality shall have the power, subject to the provisions of this act, to purchase by an agreement with any public utility and to operate any part of any public utility plant, property or facility, provided that such purchase and the terms thereof shall be approved by the commission after a public hearing.

(c) Any municipality shall have the power, subject to the provisions of this act, to acquire by condemnation and to operate the property of any public utility actually used and useful for the convenience of the public then operating under a license, permit or franchise existing at the time this act takes effect, or operating in such municipality without any permit or franchise.

(d) Any municipality shall have the power, subject to the provisions of this act, to acquire by purchase as provided in this act, and to operate the property actually used and useful for the convenience of the public of any public utility which has consented to the purchase, taking and operation of such property by a municipality.

(e) No municipality shall hereafter enter upon the original construction of any municipal plant for a public utility service where there is in operation in such municipality a public utility engaged in the same kind of service without first obtaining from the commission a declaration, after a public hearing, that public convenience and necessity require the service of such municipal plant.

(f) Any municipality which has acquired or constructed any public utility plant, property or facility shall have the power to contract with a public utility for the operation of any part or the whole thereof, subject to the provisions of this act and to the exercise by the commission in respect to such public utility of the powers of regulation and supervision conferred upon it by this act.

281. Action by Municipalities to Acquire Plants. Any municipality may determine to acquire the property of a public utility, as authorized under the provisions of this act, by a vote of a majority of the electors voting thereon at any general, municipal or special election at which the question of the purchase of such property shall have been submitted. In the event that such property shall be operated at the time of such determination under a license, permit or franchise now existing and the public utility shall not have agreed to such purchase by the municipality, such municipality shall bring an action in the court of record of general jurisdiction of the county in which such municipality is situated against the public utility as defendant praying the court for an adjudication as to the necessity of such taking by the municipality. The public utility shall serve and file its answer to such complaint within 30 days after the service thereof, whereupon such action shall be at issue and stand ready for trial upon 30 days' notice by either party. Unless the parties thereto waive a jury, the question as to the necessity of the taking of such property by the municipality shall be submitted to a jury.

282. Property Taken; Compensation. Any municipality purchasing the plant, property or facilities of a public utility as aforesaid shall purchase the whole of such plant, property or facilities within its limits used and useful for the convenience of the public in the production of the same kind of service as that proposed to be established by the municipality.

283. Municipality May Serve Outside Limits. Where the major part of the plant, property or facilities of such utility lies within the limits of the municipality purchasing the same but other

parts of such plant, property or facilities lie without its limits, the municipality may purchase the whole or such parts of such plant, property or facilities outside of its limits as the commission, taking into consideration the rights of the public utility and of the other municipalities in which it operates, may, after notice to all parties interested and a public hearing, determine is in the public interest and is necessary for the proper carrying on of its business.

284. Status of Municipal Plant in another Municipality. A municipality which has acquired as hereinbefore provided the plant, property or facilities of a public utility in any other municipality may thereafter operate therein as a public utility with the same rights and franchises and subject to the same limitations and obligations as the utility from which such outlying plant was purchased would have had, or to which it would have been subject, had such purchase not been made. If the outlying municipality shall itself vote to establish a municipal plant, all the provisions of this act shall be binding as to said purchase.

285. Compensation to be Determined by Commission; Notice Whenever the commission shall have been notified by either party that a municipality has decided to purchase the plant, property or facilities of a public utility and that the parties to such purchase and sale have been unable to agree on just compensation to be paid and received, the commission shall proceed to set a time and place for a public hearing upon the matters of the just compensation to be paid for the taking of the property of such public utility and of all other terms and conditions of the purchase and sale, and shall give to the municipality and the public utility interested not less than 30 days' notice of the time and place when and where such hearing will be held and such matters considered and determined, and shall give like notice to all mortgagees, trustees, lienors, and all other persons having or claiming to have any interest in such public utility, by publication of such notice once a week for not less than three successive weeks in at least one newspaper of general circulation and published in the county in which the property of such public utility to be taken is located, which publication shall be caused to be made by the municipality. Within a reasonable time, not exceeding one year, after the time fixed for such hearing in such notice, the commission shall, by order, fix and determine and certify to the municipal council, to the public utility and to any mortgagee, trustee, lienor or other creditor appearing upon such hearing, the just

compensation to be paid for the taking of the property of such public utility actually used and useful for the convenience of the public and all other terms and conditions of sale and purchase which it shall ascertain to be reasonable. The compensation and other terms and conditions of sale and purchase so certified shall constitute the compensation and terms and conditions to be paid, followed and observed in the purchase of such plant from such public utility. Upon the filing of such certificate with the clerk of such municipality and upon compliance with the terms and conditions of sale so certified, the exclusive use of the property taken shall vest in such municipality.

286. Appeal. Any public utility or the municipality or any mortgagee, lienor or other creditor of the public utility, being dissatisfied with such order, may within 30 days commence and prosecute an action in the court of record of general jurisdiction of the county in which the purchasing municipality is located to alter or amend such order or any part thereof.

287. If Decision Affirmed. If the court shall not adjudge that the compensation fixed and determined in such order is unjust or that some of the terms or conditions fixed and determined therein are in some particulars unreasonable, the compensation, terms and conditions fixed in said order shall be the compensation, terms and conditions to be paid, followed and observed in the purchase of said plant from such public utility.

288. If Decision for Utility. If the court shall adjudge that such compensation is unjust or that some of such terms or conditions are unreasonable, the court shall remand the same to the commission with such findings of fact and conclusions of law as shall set forth in detail the reasons for such judgment and the specific particulars in which such order of the commission is adjudged to be unreasonable or unjust.

289.[1] **Reconsideration of Compensation.** If the compensation fixed by the previous order of the commission be adjudged to be unjust or the terms and conditions unreasonable, the commission shall forthwith proceed to set a re-hearing for the re-determination of such compensation and terms and conditions as in the first instance, subject to the provisions of sections 286 to 288 hereof.

[1] Numbers 290 to 300, inclusive, are not assigned to sections.

ARTICLE X.

COMMISSION PROCEDURE AND PRACTICE.

301. Rules of Practice. The commission may from time to time make, publish or amend rules for the order and regulation of all proceedings and investigations which under the provisions of this act it is authorized to conduct.

302. Complaint Served on Utility Complained of. Whenever complaint has been made to the commission, as elsewhere in this act provided for, the commission may serve on the person complained of a copy of such complaint, and may proceed to investigate the matters complained of.

303. Hearing and Investigation. Whenever the commission shall determine to conduct an investigation of any rate or of any service, either with or without complaint as in this act provided for, it shall fix a time and place for public hearing of the matters under investigation, and shall notify the complainant, the person complained of, and such other persons as it may deem proper, of such time and place of hearing, at least ten days in advance thereof. At the hearing held pursuant to such notice, the commission may take such testimony as may be offered or as it may desire, and may make such other or further investigation as in its opinion is desirable.

304. Service on Public Utilities. Service on any person of any notice or order or other matter under the provisions of this act may be made by depositing in the mail such notice or order or other matter or a certified copy thereof, directed to the public utility at the principal office of the public utility in this state.

305. Separate Hearings. When complaint is made of more than one matter or thing the commission may order separate hearings thereon and may hear and determine the several matters complained of separately and at such times as it may prescribe. All hearings conducted by the commission shall be open to the public. In any hearing, proceeding or investigation conducted by the commission, any party may be heard in person or by attorney.

306. Power to Administer Oaths and Subpœna Witnesses; Contempt. The commission and each of the commissioners, for the purposes mentioned in this act, may administer oaths, certify to official acts, issue subpœnas, compel the attendance of wit-

nesses and the production of papers, books, accounts, documents and testimony. In case of failure on the part of any person or persons to comply with any order of the commission, or any commissioner, or any subpœna, or of the refusal of any witness to testify to any matter regarding which he may be interrogated lawfully, it shall be the duty of the court of record of general jurisdiction of any county, or the judge thereof, on application of the commission or of a commissioner, to compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpœna issued from such court or a refusal to testify therein.

307. Attendance of Witnesses. Any party to a proceeding before the commission with the consent of the commission shall have process to enforce the attendance of witnesses and the production of books, papers, maps, contracts, reports and records of every description affecting the subject matter of the investigation.

308. Compensation of Witnesses. Witnesses who are summoned before the commission shall be paid the same fees and mileage that are paid to witnesses in the courts of record of general jurisdiction in this state. Witnesses whose depositions are taken pursuant to the provisions of this act and the magistrate or other officer taking the same shall be entitled severally to the same fees as are paid for like services in courts of record of original jurisdiction in this state.

309. Immunity of Witnesses. No person shall be excused from testifying or from producing books, accounts and papers in any investigation or inquiry by or hearing before the commission or any commissioner when ordered so to do, based upon or growing out of any violation of the provisions of this act, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to incriminate him or subject him to penalty or forfeiture; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may have testified or produced any documentary evidence; provided, that no person so testifying shall be exempt from prosecution or punishment for perjury in so testifying; and provided, further, that any person may expressly waive the protection of this section.

310. Depositions. The commission, or with the consent of the commission any party to any proceeding before the commission, may,

in any investigation, cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the courts of record of general jurisdiction in this state.

311. Rules of Evidence. In the conduct of all hearings and investigations, the commission shall not be bound by the technical rules of evidence. No informality of any proceeding or in the manner of taking testimony before the commission or any commissioner or any agent of the commission shall invalidate any order, decision, rule or regulation made, approved or confirmed by the commission.

312. Dismissal of Complaint; Absence of Damage to Complainant. No complaint shall at any time be dismissed solely because of absence of direct damage to the complainant.

313. Record of Proceedings. The minutes of all hearings had before or by the commission shall be kept, and shall include the names of all persons who appeared and witnesses who were sworn, with the identification of any documentary evidence produced.

314. Transcripts of Testimony. Parties to any proceeding before the commission shall be entitled to transcripts of the testimony taken in such proceedings, subject to such reasonable rules and regulations as the commission may prescribe.

315. Opinions and Orders Published. Every order of the commission shall be in writing and in cases of importance may be accompanied by an opinion setting forth in brief the facts on which the commission has based its order. The commission shall provide for the publication from time to time and for the assembling of its opinions and orders.

316. Effective Date of Orders. Unless a different time be prescribed by the commission, every order of the commission shall be effective 30 days after the service thereof.

317. Service on Parties. Straightway after the entry of record of any order of the commission, notice thereof shall be given to every party required to obey the order.

318. Modification of Orders. At any time after the entry thereof the commission in the manner provided for the making thereof may alter, amend, annul or otherwise modify any order.

319.[1] **Rehearings.** At any time after an order has been made by the commission any person interested therein may apply for a rehearing in respect to any matter determined therein and the commission shall grant and hold such a rehearing if in its judgment sufficient reason therefor be made to appear, which rehearing shall be subject to such rules as the commission may prescribe. Application for such a rehearing shall not excuse any public utility or person from complying with or obeying an order of the commission or operate in any manner to stay or postpone the enforcement thereof except as the commission may by order direct. Any order of the commission made after such rehearing shall have the same force and effect as an original order but shall not affect any right or the enforcemcnt of any right arising from or by virtue of the original order, except as directed by the commission.

[1] Numbers 320 to 330, inclusive, are not assigned to sections.

ARTICLE XI.

ENFORCEMENT OF ACT.

331. Commission May Begin Suit. Whenever the commission shall be of the opinion that any public utility is failing or omitting, or is about to fail or omit, to do any thing required of it by this act, or by any order of the commission, or is doing any thing, or about to do any thing or permitting any thing, or about to permit any thing to be done, contrary to or in violation of the provisions of this act, or of any order of the commission, it may begin and prosecute in any court of competent jurisdiction an appropriate action at law or in equity to remedy or to prevent such real or proposed violation.

332. Venue. All provisions of the law of this state relating to venue shall apply to proceedings under this act, and in addition any action at law or in equity to enforce any provision of this act or of any order of the commission, or to prevent any proposed violation thereof, may be commenced in the court of record of general jurisdiction in such matters in and for the county in which the principal office of the commission is located or in the county where the principal office in the state of the public utility is located.

333. Duty of Courts to Entertain Actions. All provisions of the laws of this state prescribing the duties and jurisdictions of the courts thereof shall apply to this act, and in addition it shall be the duty of the court of record of general jurisdiction in like matters in the county in which the commission has its principal office to entertain and determine all actions commenced under the provisions of section 331 of this act, and to enforce the provisions of this act, or of any order of the commission, by mandamus, or by injunction, or by any other appropriate remedy.

334. Commission May Order Reparation. When complaint has been made to the commission concerning any rate of any public utility and the commission has found after investigation that the public utility has charged an excessive or unjustly discriminatory amount for any service, the commission may in its discretion order that the public utility make due reparation to the complainant therefor, with interest at the legal rate from the date of payment of such excessive or unjustly discriminatory amount.

335. Action to Enforce Order for Reparation. If a public utility does not comply with an order of the commission for the payment of money within the time fixed in such order, the complainant, or any person for whose benefit such order was made, may file in any court of competent jurisdiction a petition setting forth briefly the causes for which he claims damages and the order of the commission in the premises. In such action the findings and order of the commission shall be prima facie evidence of the facts therein stated. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee to be taxed and collected as a part of the costs of the action.

336. Limitations upon Actions for Reparation. All complaints for the recovery of damages shall be filed with the commission within two years from the time the service as to which complaint is made was completed or performed, and not after, and a petition for the enforcement of an order of the commission for the payment of money shall be filed in the proper court within one year from the date of the order and not after.

337. Refund of Amounts Collected in Excess of Schedule Rates. Whenever any public utility shall charge, collect or receive any rate or rates in excess of the rates fixed in the schedule of charges

then in force, as provided in this act, it shall be the duty of such public utility straightway to refund to the person paying such excessive rates the difference between the lawful rates fixed in such schedule and the rates so charged, collected or received.

338. Actions to Set Aside Orders of Commission. Any person in interest, being dissatisfied with any order of the commission, may commence an action in the court of record of general jurisdiction in such matters in and for the county in which the commission has its principal office, to vacate and set aside such order on the ground that the commission lacked authority in the premises or that if enforced the order would violate a provision, or provisions, of any law of this state, or of the constitution of this state or of the United States. The answer of the commission to the complaint shall be served and filed within 30 days after service of the complaint, whereupon said action shall be at issue and stand ready for trial upon ten days' notice to either party.

339. Limitation on Appeals and Actions to Set Aside. Every proceeding, action or suit to set aside, vacate or annul any determination or order of the commission, or to enjoin the enforcement thereof, or to prevent in any way such order or determination from becoming effective, shall be commenced, and every appeal to the courts or right of recourse to the courts shall be taken or exercised, within 30 days after the service of a copy of such order or determination on the public utility or public utilities party thereto, and the right to commence any such action, proceeding or suit or to take or exercise any such appeal or right of recourse to the courts shall terminate absolutely at the end of such 30 days after such service.

340. New Evidence upon Trial. If upon trial of such action evidence shall be introduced by the plaintiff which is found by the court to be different from that offered upon the hearing before the commission, or additional thereto, the court, before proceeding to render judgment, unless the commission or its attorney shall file a consent in writing to the contrary, shall transmit a copy of such evidence to the commission and shall stay further proceedings in such action for such time as the court may by order fix

341. Reconsideration by Commission. Upon the receipt of such evidence, the commission shall consider the same and may alter, modify, amend or rescind its order complained of in said action and shall report its action thereon to said court within ten days from the receipt of such evidence.

342. Supplemental Findings; Procedure by Court. If the commission shall rescind its order complained of the action shall be dismissed; if it shall alter, modify or amend the same, such altered, modified or amended order shall take the place of the original order complained of and judgment shall be rendered thereon as though made by the commission in the first instance; if the original order shall not be rescinded or changed by the commission, judgment shall be rendered upon such original order.

343. Appeal to Court of Last Resort. Either party to said action, within 30 days after service of a copy of the order or judgment of the court of original jurisdiction, may appeal to the court of last resort. Where an appeal is taken, the cause shall, on the return of the papers to such court, be immediately placed on the calendar of the then pending term and shall be assigned and brought to a hearing in the same manner as other cases on such calendar.

344. Burden of Proof. In all trials, actions and proceedings arising under the provisions of this act, or growing out of the exercise of the authority and powers granted herein to the commission, the burden of proof shall be upon the party adverse to the commission or seeking to set aside any determination, requirement, direction or order of the commission, to show that the determination, requirement, direction or order of the commission complained of is unlawful or violates a provision of any law of this state or of the constitution of this state or of the United States, as the case may be.

345. Court Procedure and Officers. In all actions and proceedings in court arising under this act, all processes shall be served and the practice and rules of evidence shall be the same as in civil actions or in suits in equity, except as otherwise herein provided. Every sheriff or other officer empowered to execute civil process shall execute any process issued under the provisions of this act and shall receive such compensation therefor as may be prescribed by law for similar services.

346. Injunctions Issued. No injunction shall issue suspending or staying any order of the commission, except upon application to the court of record of general jurisdiction in such matters in and for the county in which the commission has its principal office, or the presiding judge thereof, and upon notice to the commission and hearing.

347. Injunction Order Shall Specify Nature of Damage. The order or decree of any court, enjoining the operation of any order or determination of the commission or suspending the same, shall contain a specific finding based upon evidence before the court and identified by reference thereto that substantial or irreparable damage otherwise would result to the petitioner, and specifying the nature of the damage.

348. Rules of Procedure. The courts before which the proceedings mentioned herein may be brought as hereinbefore provided may each, respectively, from time to time make and publish or amend and modify rules and practices for the order and regulation of proceedings before them or appeals to them, including the forms of notice and service thereof.

349. Expedition of Cases. Any proceeding in any court of this state, directly affecting an order of the commission, or to which the commission is a party, shall have preference over all other civil proceedings pending in such court.

350. Violation of Act of Order of Commission; Forfeiture. Every public utility and all officers, agents and employes of any public utility shall obey, observe and comply with every order made by the commission under authority of this act so long as the same shall be and remain in force. Any public utility which shall violate any provision of this act or which shall fail. omit or neglect to obey, observe or comply with any order or any direction or requirement of the commission shall forfeit[1] "to the state not to exceed $5,000 for each and every offense; every violation of any such order or direction or requirement, or of this act, shall be a separate and distinct offense and in case of a continuing violation, every day's continuance thereof shall be and be deemed to be a separate and distinct offense.

[1] In some jurisdictions it may be preferable to define the offense as a misdemeanor. In some such jurisdictions the general law may prescribe penalties for misdemeanors of all kinds. In others it may be desirable in this act to prescribe the penalties for misdemeanors defined herein. In such cases the section after defining the offense may read as follows: "is guilty of a misdemeanor and is punishable by a fine not exceeding $5,000 for each offense."

351. Violation of Act or Order of Commission; Misdemeanor. Every officer, agent or employe of any public utility who shall violate, or who shall procure, aid or abet any violation by any such public utility of any provision of this act, or who shall fail to obey, observe and comply with any order of the commission or any provision of an order of the commission, or who shall procure, aid or abet any such public utility in its failure to obey, observe and comply with any such order or provision, shall be guilty of a misdemeanor.[1]

[1] In some jurisdictions it may be desirable to prescribe the penalty for committing a misdemeanor. This may be done by adding the following to the section: "and shall be punishable by a fine not exceeding $5,000 for each offense."

352. Unjust Discriminations. In violation of Sections 152 to 156, inclusive, and of Section 202, any natural person who knowingly authorizes, gives or affords any benefit. preference or advantage, or who knowingly receives or participates directly in any benefit, preference or advantage from such offense, shall be guilty of a felony and on conviction shall be punishable by imprisonment as the court may direct for a period not exceeding five years.

353. Penalty for Failure to Make Reports. Any public utility which fails to make and file any report called for by the commission within the time specified, or within the time extended as the case may be, or to make specific answer to any question propounded by the commission shall forfeit[1] not to exceed $5,000 for each such offense, and each day's continuance of such failure shall constitute a separate offense.

[1] See note to Section 350.

354. Penalty for False Return. Any person who wilfully makes any false return or report to the commission, or to any member, agent or employe thereof, and any person who aids or abets such person, is guilty of a felony, and upon conviction shall be imprisoned as the court may direct for a term not exceeding five years.

355. Penalty for Falsification of Accounts. Any person who wilfully makes any false entry in the accounts, records or memoranda prescribed by the commission for any public utility, or wilfully destroys, mutilates, or by any other means falsifies such accounts, records or memoranda or wilfully neglects or fails to make full, true or correct entries of all facts and transactions appertaining thereto is guilty of a felony and upon conviction shall be imprisoned as the court may direct for a term not exceeding five years.

356. Penalty for Destroying Records. Any person who wilfully mutilates or destroys any accounts, records or memoranda of any public utility is guilty of a felony, and upon conviction shall be imprisoned as the court may direct for a term not exceeding five years; provided, however, that the commission may at its discretion issue orders specifying such operating or financial accounts, records, or memoranda of public utilities as may after a reasonable time be destroyed and the commission may prescribe the length of time such accounts, records, memoranda, books and papers shall be preserved.

357. Penalty for False Statement or Representation. Every officer, agent or employe of a public utility, and every other person who knowingly authorizes, directs, aids in, issues or executes, or causes to be issued or executed, any stock, stock certificate, bond, note or other evidence of indebtedness, in non-conformity with the order of the commission authorizing the same, or contrary to the provisions of this act, or who, in any proceeding before the commission, knowingly makes any false statement or representation, or with the knowledge of its falsity files or causes to be filed with the commission any false statement or representation, which said statement or representation so made, filed or caused to be filed may tend in any way to influence the commission to make an order authorizing the issue of any stock or stock certificate, or any bond, note or other evidence of indebtedness, or which results in procuring from the commission the making of any such order, or who, with knowledge that any false statement or representation was made to the commission, in any proceeding, tending in any way to influence the commission to make such orders, issues or executes or negotiates, or causes to be issued, executed or negotiated any such stock or stock certificate, or bond, note or other evidence of indebtedness, or who, directly or indirectly, knowingly applies, or causes or assists to be applied the proceeds or any part thereof, from the sale of any stock or stock certificate, or bond, note or other evidence of indebtedness, to any purpose not specified in the commission's order, or to any purpose specified in the commission's order in excess of the amount authorized for such purpose, or who, with knowledge that any stock or stock certificate, or bond, note or other evidence of indebtedness, has been issued or executed in violation of any of the provisions of this act, negotiates, or causes the same to be negotiated, is guilty of a felony, and on conviction thereof shall be imprisoned as the court may direct for a term not exceeding five years.

358. Penalty for Obstructing Commission. Any person who wilfully obstructs or hinders the commission or a member thereof or an authorized agent or examiner in making an inspection, examination or investigation of the accounts, records, memoranda, books or papers of any public utility or of the property or facilities thereof is guilty of a felony, and upon conviction shall be fined not more than $5,000, or imprisoned as the court may direct for a term not exceeding five years, or both.

359. Penalty for Divulging Information. Any regular or special employe of the commission who divulges any fact or information coming to his knowledge respecting an inspection, examination or investigation of any account, record, memorandum, book or paper or of the property and facilities of a public utility, except in so far as he may be authorized by the commission or by a court of competent jurisdiction, or a judge thereof, is guilty of a misdemeanor, and upon conviction shall be fined not more than $5,000.

360. Public Utility Liable for Civil Damages. In case any public utility shall do, cause to be done, or permit to be done, any act, matter or thing prohibited, forbidden or declared to be unlawful, or shall omit to do any act, matter or thing required to be done by this act, or by any order of the commission, such public utility shall be liable to the persons affected thereby for the amount of all loss, damage or injury caused thereby or resulting therefrom. An action to recover for such loss, damage or injury may be brought in any court of competent jurisdiction by any person.

361. Penal Actions. Every public utility, all officers and agents of any public utility, and every other person shall obey, observe and comply with every provision of this act and with every order made by the commission under authority of this act and duly served in accordance with its provisions, so long as the same shall be and remain in force. Any public utility or its officers or agents, and any other person who shall violate any of the provisions of this act punishable as a misdemeanor, or who fails, omits or neglects to obey, observe or comply with any order or any direction or requirement of the commission, shall (in addition to liability to the party aggrieved for all damages sustained by reason of such violation) forfeit to the state not to exceed the sum of $5,000 for each and every violation or in the case of a violation which is punishable as a misdemeanor not to exceed the maximum sum fixed as a fine therefor, which shall be recovered in an action at law to the use of the state upon the

complaint of the commission appearing by its attorney or by the attorney general or district attorney of the district in which such violation was committed; but no such action shall be maintained unless brought within two years after the date of such violation; nor shall such an action be maintained in the case of a person who has already been convicted for the same violation of this act, and recovery by an action brought in accordance with this section shall be a bar to any criminal prosecution for the same violation of this act.

362. Penalty for Accepting Rebate. Any person receiving service from any public utility subject to the provisions of this act, who shall knowingly by an employe, agent, officer or otherwise, directly or indirectly, by or through any means or device whatsoever, receive or accept from such public utility any sum of money or other valuable consideration as a rebate or offset against the regular charges for such service, as fixed by the schedules of rates provided for in this act, shall in addition to any penalty provided by this act forfeit to the state a sum of money three times the amount of money so received or accepted and three times the value of any other consideration so received or accepted, to be ascertained by the trial court; and the attorney general of the state is authorized and directed, whenever he has reasonable grounds to believe that any such person, corporation or company has knowingly received or accepted from any such public utility any sum of money or other valuable consideration as a rebate or offset as aforesaid, to institute in any court of the state of competent jurisdiction a civil action to collect the said sum or sums so forfeited as aforesaid; and in the trial of said action all such rebates or other consideration so received or accepted for a period of six years prior to the commencement of the action may be included therein, and the amount recovered shall be three times the total amount of money or three times the total value of such consideration so received or accepted, or both, as the case may be.

363. Perjury. Any person who knowingly makes any false statement of fact under oath, whether oral or in writing, as required by this act, is guilty of perjury and upon conviction shall be punished as provided for in the perjury statutes of this state.

364. Remedies Cumulative and Not Exclusive. The remedies provided in this act by way of civil damages for persons injured by an act or omission of a public utility shall be cumulative, and in addition to any other remedy or remedies in this act provided.

365.[1] Penalties Paid to General Funds. All forfeitures, fines and penalties collected under the provisions of this act shall be paid into the general funds of the state.

[1] Numbers 366 to 397, inclusive, are not assigned to sections.

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398. Repeal of Conflicting Acts. The following acts and parts of acts and all other acts and parts of acts in conflict with the provisions of this act are hereby repealed in so far as they are inconsistent herewith: (Here state in full the legal designations of the acts and parts of acts which are to be repealed.)

399. When Act Becomes Effective. This act shall take effect ——

APPENDIX A

REPORT ON SUGGESTIONS FOR THE AMENDMENT OF PUBLIC UTILITY BILL.

This report has been prepared by Mr. William D. Kerr, on the request of Messrs. Low and Willcox. It is a résumé of the arguments on objections to and criticisms of the bill submitted to the National Civic Federation by the Executive Council of its Department on the Regulation of Interstate and Municipal Utilities. It summarizes the more important points developed from many quarters, in numerous conferences and in lengthy correspondence, both before and after the submission of the bill. No attempt is made to preserve a narrative form of presentation. In effect the report is an annotation of the bill itself without the citation of authorities.

The plan adopted is to set forth under the number of the section the pertinent suggestions and criticisms relating to each section in turn. The suggestions, where there are more than one pertaining to a single section, are lettered for the sake of reference and convenience. Under each suggestion are given in the briefest possible form, as impartially as Mr. Kerr can do it, first the reasons advanced in favor of the suggestion, and second the reasons opposing a change. Again let it be said that the report does not pretend to cover every suggestion that has been made, though it does cover the most important ones.

Section 15.

Suggestion. (a) Insert in line two, after "include," the words "every municipality and."*

Argument For. Many municipalities own and operate facilities for rendering public utility services. The public deserves protection from unreasonable and discriminatory rates and from inadequate and unsafe service resulting from imperfect management of these facilities. The avowed purpose of the bill is to protect the public interest in these services. The agency,

* Note. The adoption of this suggestion would require appropriate sections or subsections, excepting from the application of articles IV, V, and IX public utilities that are municipalities. It would also enable Section 230 to be removed from the bill.

whether private or public, by which the services are performed is immaterial. Experience has demonstrated that municipalities in the administration of public utilities are prone to err even as are private corporations. The State should subject municipalities to the same regulation as is imposed on companies. Furthermore, in the same or adjoining municipalities municipal and private plants frequently are found operating at the same time. Where actual competition exists the one agency should not be burdened with restrictions to which the other is not subject. Potential competition frequently exists where there is no actual competition and comparisons between the two kinds of agencies may result in undue prejudice to the one which is subject to legislative restraint, while seeming to favor the one which is not so restrained. Finally, to the extent that regulation of private companies is in the interest of stockholders and investors similar regulation of municipal enterprises is required for the protection of taxpayers.

Argument Against. Wholly apart from the merits, regulation of municipally owned utilities is outside the scope of this bill. The investigation which resulted in this bill was the logical consequence of an inquiry upon the relative merits of municipal and private ownership and operation, in which inquiry the final opinion favored private ownership and operation under proper conditions of regulation. The purpose of this bill is to define such proper conditions of regulation so far as they are subject to control by legislative action.

Considering the suggestion on its merits, State regulation of the rates and services of municipally owned utilities violates the so-called home rule principle which accords to municipalities and their citizens the fullest possible political autonomy consistent with the welfare of the State at large. A municipality's conduct of its own public utility is a matter of primary concern only to its own citizens. The State is not justified in passing beyond the fundamental requirement of correct accounting and full publicity. These requirements are embodied in Section 230 of the bill.

Suggestion. (b) In the next to the last line of paragraph (b) insert the following phrase: "on the premises where produced, or the premises immediately adjacent thereto."

Argument For. The exception recognizes a class of producers who are generally referred to under the designation of

"isolated plants." The exception leaves the possible field of activity of an isolated plant as broad as the proprietary interests in land of its owners, and in some localities might enable a single isolated plant to serve not only all the buildings in a single block but disconnected buildings in several blocks. In fact, the only limitation within the proprietary interests in land of the owner would be his ability to procure permits to cross streets. In such an event large numbers of consumers might be denied the protection of the law and established public utilities might be seriously hampered by the resulting loss of customers.

Argument Against. The exception in paragraph (b) is a reasonable one under normal circumstances. The suggestion would establish an arbitrary rule which in some cases might lead to injustice. For instance, while the suggestion might except from the operation of the act the owner of two office buildings immediately adjoining each other in the same block, it would impose the obligations of the law on the same two buildings if a street chanced to pass between them. Provided the owner is able to bridge the gap between the two buildings in the latter case as in the former, there is no reason why he should be subjected to the provisions of the bill in the one case and not in the other, or why his tenants should be denied the protection of the bill in one case and not in the other.

SUGGESTION. (c) Omit paragraph (b).

Argument For. The application of the bill to property owners who produce public services for sale to their tenants, may be left to general law under the definition of a public utility contained in paragraph (a). Only such agencies are declared to be public utilities as furnish service "to or for the public." The isolated plant producer may safely be left to take his chances under the local interpretation of this phrase.

Argument Against. The bill should state clearly that it does not propose to interfere with the beneficial enjoyment of real estate by its owners so long as the sale of services produced is confined to such property.

SECTION 18. (New.)

SUGGESTION. Define the term "securities" in a new section to read as follows: "The term 'securities' when used in this act shall

mean and include stocks, stock certificates, bonds, notes and other evidences of indebtedness payable at periods of more than twelve months from the date thereof."

Argument For. The purpose is to simplify the wording of sections relating to the issue of securities and to avoid the frequent repetition of a long and cumbersome phrase.

Argument Against. The twenty-two words embraced in the proposed definition occur in the text only twice. The first ten words of the twenty-two occur in this combination nine times. No material advantage is gained by the suggestion.

SECTION 19. (New.)

SUGGESTION. Define the term "issue" in a new section to read as follows: "The term "issue" when used in this act referring to stocks, stock certificates, bonds, notes and other evidences of indebtedness, shall mean to sell, mortgage, pledge or otherwise dispose of for any consideration or for any purpose."

Argument For. The word "issue" is sometimes used by bankers in a sense which differs from its ordinary legal meaning. Possible misunderstandings may be avoided by inserting the definition. Strictly construed, the term "issue," unless defined, might prevent a public utility from disposing of securities of other companies held in its treasury. (See provisions of Article IV.)

Argument Against. The use of definitions in a bill of this character is to be avoided wherever possible. The familiar rule of interpretation is that the inclusion of some elements implies the exclusion of all other elements. The courts can be trusted to give sensible constructions if disagreements arise.

SECTIONS 36 AND 37.

SUGGESTION. Identification with public utilities under the jurisdiction of the commission should not constitute a disqualification for membership in the commission or cause for removal from the commission. Such identification should merely disqualify a commissioner from sitting in a particular proceeding.

Argument For. Disqualification places an unreasonable restriction on the character of men available for the positions.

It attaches an unfair stigma to identification with public utilities. Men of substance frequently find their safest investments in public utility securities and disqualification presents to them the alternative of withholding their services from the public or of denying themselves the advantages of customary fields of investment.

Argument Against. The alternative rule of disqualification proposed is based on judicial practice. The cases are not parallel. The functions of the commission are continuous in their application to all public utilities under their jurisdiction. The commissioners are administrative and not judicial officers. When a judge is disqualified to hear a particular case, other judges may be brought in to fill his place. There are no other commissioners to fill the places of members of the commission disqualified to sit in a particular case.

Section 44.

Suggestion. This section should be omitted.

Argument For. This section accomplishes no useful purpose because it is not in the form of an appropriation act, and can have no binding effect on the same or subsequent legislatures.

Argument Against. This section does no harm and serves as a reminder to legislatures that appropriations are needed to carry out the purpose of the bill.

Section 46.

Suggestion. This section should be omitted and in its place should be substituted a section authorizing the commission to appoint a counsel who shall not appear as advocate in any proceeding before the commission.

Argument For. The commission needs a disinterested legal adviser who will be free from the zealousness engendered by the advocacy of a cause. If attorneys are required to present causes to the commission, they may be engaged under the broad provisions of Section 47.

Argument Against. The statutes of some States provide that the Attorneys General shall act as attorneys for the commissions. In other States, the commissions are authorized to employ attorneys independently of the Attorneys General. This section states a preference for the latter course. Section 47 is broad enough to enable the commission to retain independent counsel for advice on matters of law, if it will.

Section 77.

Suggestion. (a) In the first two lines of paragraph (a) strike out the words "or any person served or claiming the right to be served thereby " and substitute therefor the words "or any person."

Argument For. It should lie within the power of any individual to start the machinery of the commission in motion on his bare complaint. The duties imposed by the bill are continuous and the administrative functions of the commission are continuous. If a breach of duty be discovered, it should be remedied by suitable action on the part of the commission and the commission should be authorized to proceed regardless of the source of its information or of the relation to the public utility of a possible complainant. The commission safely can be trusted to protect itself from consequences of the abuse of the power possessed by any citizen to set the machinery of the commission in motion. The commission is not an agency for the righting of private wrongs but one for the protection of the general public welfare.

Argument Against. Opening wide the doors to complainants will lead to waste of the commission's time and energies and to needless expense and effort on the part of the public utilities complained of. No person should have access to the commission who is not in the position of a party injured or likely, in the nature of things, to be injured.

(b) See Section 151.

(c) See Section 201.

Section 78.

Suggestion. (a) In lines four and five, substitute for the phrase "used and useful for the convenience of the public," the following phrase: "used or useful for the convenience of the public." Make a similar substitution where the words "used and useful" occur in Sections 278, 279, 280, 282 and 285.

Argument For. Literally construed, the term "used and useful" would deprive a company of the right to have considered under the provisions of the several sections surplus apparatus and machinery not at the moment actually in use or street construction laid down in anticipation of future growth, but not yet actually in use and other property similarly situated.

Argument Against. The term "used and useful" is a customary term employed in the decisions of courts and public service commission laws. It has been construed by courts and commissions and no case has been discovered in which it has not received exactly the meaning attributed to the suggested alternative term, "used or useful." Furthermore, the term proposed is subject to the criticism that, on literal interpretation, it might cause full consideration to be given to property which, though still in use, has passed its period of usefulness, such, for instance, as horse-cars still owned by an electric railroad.

SUGGESTION. (b) In the fourth line from the end, strike out the phrase: "and such other matters as may have a bearing upon the subjects under investigation" and substitute therefor the phrase: "and such other matters as the commission may deem expedient."

Argument For. The language of the section may prove an obstacle to the commission by affording an opportunity to raise a question of law as to what matters have a bearing upon the subjects under investigation. The commission should be allowed the fullest possible latitude.

Argument Against. While there may be some technical force to the suggestion, the entire section seems so general in its terms as to leave no doubt as to the intent of the legislature to give the commission the fullest possible scope in its investigations.

SECTION 80.

SUGGESTION. (a) Amend the section so as to provide that rates fixed by the commission shall be effective for a period of time not exceeding two years instead of three years.

Argument For. The Interstate Commerce Law carrics a two years' limitation on rates fixed by the Interstate Commerce Commission. For the sake of uniformity in practice, the rule in individual States should be the same.

Argument Against. No dissatisfaction is expressed with the application of the two-year rule to interstate railroads. In the case of municipal public utilities, it seems desirable to have a longer period. Five years probably would not be too long. The three-year period of the bill is a mean between the two extremes.

SUGGESTION. (b) Strike out all of the last two lines before the first word and substitute therefor the following: "until a change is authorized by the commission."

Argument For. Rates once fixed by the commission should stand until changes are authorized by the commission itself. When the conditions change under which a rate is fixed, the public utility may apply to the commission for authority to change the rate, but once a rate is taken in hand by the commission, it should be subject to no change without the commission's authority.

Argument Against. The proposal would result in rigidity of rates and rate schedules which is not in the public interest. No public service commission can be equipped to supervise such a mass of detail as the proposed substitute would involve. The limitation of the section is supposed to represent the approximate period during which conditions will maintain which the commission found to exist when it made its investigation for the determination of a rate.

SUGGESTION. (c) See Section 151.

SECTION 81.

SUGGESTION. See Section 201.

SECTION 83.

SUGGESTION. (a) Substitute for the section a provision that no reports, records and accounts in the possession of the commission shall be open to inspection by the public unless authorized by the commission.

Argument For. The commission should be allowed to determine what reports, records and accounts in its possession should be open to public inspection.

Argument Against. Reports, records and accounts in the possession of the commission are of a public nature and prima facie should be at the disposal of the public. There may be certain classes of reports, records and accounts which should not be disclosed to the public gaze. Section 212 subsequently requires that reports of accidents shall not be open to public inspection unless specially authorized by the commission. The section of the bill is preferable to the suggested substitute because it emphasizes publicity rather than secrecy.

SUGGESTION. (b) Strike out the exception beginning in the middle of the third line and add a new sentence as follows: "Whenever it determines that the public interest so requires, the commission may order that any report, record or account in its possession be withdrawn from public inspection for a period not to exceed ninety days."

Argument For. If the withdrawal from public inspection of reports, records and accounts is left optional with the commission, there is a likelihood that strong pressure may be brought to bear on the commission to exercise its power in particular cases where the withdrawal of the report, record or account is not in the public interest. There should be a definite limitation on the commission's right to defeat this publicity effort of the bill.

Argument Against. Throughout the bill the authority conferred on the commission is broad and general. Enormous opportunities may be afforded a commission susceptible to improper influences to defeat particular provisions. No sufficient reason appears for making an exception to the general rule in this case.

ARTICLE IV.

SUGGESTION. Strike out all of the article and substitute provisions which will effect substantial publicity of the essential details of stock and bond issues without requiring that the commission give or withhold its approval in any case.

Argument For. The prior approval of a public service commission as a condition precedent to the financing of properties renders financing more difficult than it would otherwise be and makes it impossible in some cases to take advantage of favorable

markets and imposes an unwise and unnecessary restriction on the ability of a public utility to discharge its primary duties of providing adequate service at reasonable rates. No necessary relation exists between stocks and bonds outstanding and the reasonableness of rates. The primary objective of the legislature in enacting such a law is the consumer and not the investor. After it has authorized the issue of specific securities, the commission morally, if not legally, is estopped to take any action regarding either rates or service which will result in denying such securities an opportunity to earn the interest specified or the fair dividends expected. This principle is likely to have application, particularly in the case of a company established when the act takes effect and which subsequently seeks authority to issue securities of the same class in addition to securities then outstanding. The obligation of the company to all bond holders and stock holders of the same class is the same and if the commission is prevented from interfering with the earnings of subsequently issued securities, it is likewise prevented from interfering with previously issued securities. Consequently, the requirement of approval or disapproval imposes on the commission the obligation of determining for all time the rights of specific classes of security holders on the first application for authority to issue additional securities of any class.

Argument against. It is futile to assert that no relation exists between the rates and service of a public utility and its capitalization. Excessive capitalization necessarily leads to a diversion of income to the payment of interest or dividends which might otherwise be devoted to the improvement of service or the reduction of rates. It does not follow necessarily that the ability of a company to perform its primary duty of furnishing adequate and safe service at reasonable rates varies inversely with the amount of its capitalization. There may be evils attached to under-capitalization as far-reaching as those attached to over-capitalization but the existence of the former does not negative the possibility of the latter. Freedom from practical restraint in the issuance of the stock of a company enjoying monopoly privileges invites speculation. This is a factor which public utility laws should strive to eliminate. Publicity of public service issues may be a palliative but it is not a certain preventive. Outstanding capital issues may not have a controlling influence on the courts in determining values for rate-making purposes but actual rate revision is not continuous in

practice, and if capitalization is excessive, management naturally will lean to its protection. Furthermore, if the credit of these monopolistic enterprises is to be maintained on a basis which will secure fresh contributions of capital as requirements necessitate, investors will need protection from the possible abuses of speculation.

SECTION 101.

SUGGESTION. Add to the section a new sentence to read as follows: "All of the provisions of this article are limited in their application to special privileges as herein defined."

Argument for. This section implies a purpose to refrain from regulating stock issues and bond issues secured by liens on property situated outside the State in the case of public utilities incorporated under the laws of another State. The implication, however, is not clear enough to be made effective in construing the substantive sections, such as Sections 103, 104, 105 and others. The proposed sentence makes clear this limitation in its application to the entire article.

Argument against. In case of doubt as to the limitation, the entire article probably would be construed as a whole. While the proposed addition may not be necessary, probably it would do no harm.

SECTION 103.

SUGGESTION. (a) Revise the section so that it will read as follows:

"Section 103. *Purpose for which Securities may be Issued.* Subject to the provisions of this act and of the order of the commission issued as provided in this act, a public utility may issue securities for:

"(a) Money, services, property or other valuable consideration which may properly be capitalized.

"(b) Discharge or lawful refunding of its obligations.

"(c) (Same as original sub-paragraph (b)).

"Provided, and not otherwise, that such public utility, in addition to the other requirements of law, shall first have secured from the commission an order authorizing such issue as provided in this act."

Argument for. A public utility has two sources of income:

1st. The sale of its securities; and

2nd. Its earnings.

There are many expenditures for which it would be impossible to issue securities under the section as written, and which it would be impracticable to charge against earnings. Of such a nature are necessary expenditures incident to establishing a new enterprise. There are no earnings against which to charge such expenditures. They cannot properly and safely be provided for through the issue of temporary notes under the provisions of Section 113. Capitalization of the cost of paving between the tracks of a street railway is not provided for in Section 103 under

(a) because paving is the property of the city and not of the utility; under

(b) because it is not the property of the utility or a part of its facilities; nor under (c) or (d).

An example of temporary capitalization subject later to amortization would be an expenditure made by a water power either before starting or in its early years of operation, to induce the establishment and construction of power using industries in its vicinity. If such expenditures were not permitted, the development of many of the larger water powers of the country would be quite impossible. The utility cannot pay for such expenditures from earnings before it starts operation or during its early years when its business is undeveloped. It is impracticable to specify by statute in advance every possible legitimate basis for the issue of securities. Public service commissions should be given very broad powers that they may meet actual situations as they arise without embarrassment from attempted statutory anticipation of them.

Argument against. In the first place, the proposed substitute overlooks a fundamental distinction made in the bill, namely, the distinction between considcration and ultimate purpose. The result of ignoring the distinction becomes evident when the proposed substitute is paraphrased in part: "A public utility may issue securities for money which may properly be capitalized." Either all money in the possession of a public utility may be capitalized or none. The fact is that a public utility is not organized to engage in the banking business or to deal with money as a commodity. The issue of stocks or bonds for the purpose alone of procuring money would not be proper.

The money received as consideration is but a means to an end and the propriety of the end should determine the propriety of the issue. Money is needed to meet the payrolls of operating employees as well as to pay the cost of paving, but it would not be contended that permanent capitalization should be authorized to meet current operating expenses. The consideration for every issue of stocks or bonds must be either property or services. Money itself is property but the propriety of issuing securities in consideration for specific pieces of property or specific services depends on the character of the property or the nature of the services or, to state the matter differently, the propriety of the exchange depends on the ultimate purpose to which the property in question or the services in question are to be applied.

In the second place, the ignoring of the distinction between consideration and purpose leads to an absurd conclusion with respect to the proposed limitation of the alleged purpose. The limitation as found in sub-paragraph (a) of the proposed substitute, is "which may properly be capitalized." This phrase clearly qualifies all that goes before. It qualifies money as well as "services, property or other valuable consideration." As already observed, it is not proper for a public utility to capitalize money. A literal interpretation of the limitation at least would nullify the entire provision.

Third. More fundamental than anything that has preceded, however, is the objection that the proposed limitation evades the very purpose of the section as drafted. The purpose of Section 103 is to state definite rules for the guidance of the commission regarding what may be capitalized with "propriety" or lawfulness. The proposed substitute leaves the entire question open. The section becomes meaningless and might better be omitted. The proposed substitute is no more than a statement of general law. It has no place in a regulating statute. Commissions cannot be given power to act arbitrarily and to make or unmake substantive rights. Throughout the bill, definite standards of conduct are prescribed for the guidance of the commission. The theory of the bill is that the commission is an administrative body charged with the responsibility of applying the specific rules laid down by the legislature. The effect of the proposed substitute would be either to nullify the bill or to make of the commission a mere ministerial office for the recording of stock and bond issues.

Fourth. The proposed substitute omits entirely the important limitation found in the sixth line of the original section, which is as follows: "when necessary and reasonably required for the following purposes and no others." This omission tends further to emasculate the section and with it, regulation of stock and bond issues.

Fifth. The original section is carefully considered and is broad enough to include every proper purpose for the issue of stocks or bonds. "Acquisition of property" is broad enough to cover every expense incurred in the development of a public utility property itself. Services devoted to acquiring rights, such as rights of way, franchises, contracts, et cetera, are spent in the acquisition of property. While paving between rails may not remain in the ownership of a street railway company, such paving would appear to be a part of the facilities which the company furnishes, particularly as such paving usually is done in pursuance of franchise obligations. At any rate, substantially, this language has been on the statute books of at least one State for several years and no instance is cited in which it has been construed in accordance with the foregoing objection.

Sixth. It has yet to be established as a principle of public utility law that it is any part of the function of a public service corporation to subsidize industries whose sole connection with them is their use of the service furnished. If it is proper for a water power company to make expenditures to induce the establishment and construction of power using industries in its vicinity, it is equally proper for railroads to make expenditures to induce the establishment and construction of traffic producing industries on their lines. Such practices on the part of railroads have received the ubiquitous designation of rebating and unjust discrimination in other forms. Public service companies are incorporated for the purpose of supplying public needs and not for the purpose of exercising their public franchise to influence industrial and commercial movements. This discussion, however, relates solely to stock and bond issues and not to the investment of surpluses from earnings.

SUGGESTION. (b) Amend sub-paragraph (d) so as expressly to permit the issue of stocks and bonds to reimburse a company for money expended for any of the purposes defined, although secured in the first instance by an issue of securities, if such securities have been paid off out of income.

Argument For. The bill should authorize the permanent capitalization of such items as equipment purchases secured in

the first instance by equipment bonds which subsequently are paid off out of income. It should also authorize the recapitalization of property secured in the first instance by bonds which are paid off out of income, under sinking fund provisions.

Argument Against. The propriety is doubtful of authorizing the issue of new securities to replace bonds retired under the provisions of sinking fund requirements. It would appear that upon such retirement new securities should be issued only as new requirements arose under the provisions of sub-paragraphs (a), (b) and (c). If a company in borrowing money agrees to repay the same by regular drafts on income, the property procured by the money so repaid should be regarded as fully paid for when the bonds are retired. With regard to the retirement from income of equipment bonds there would appear to be no question about the authority under sub-paragraph (d) to replenish the treasury for payments from income by the issue of stocks or bonds. The suggestions raise certain collateral questions of accounting practice upon which it is not possible to enter here. It is believed that the section as drafted is broad enough to meet every such contingency.

Section 104.

Suggestion. (a) In the second line, after the word "utility," insert the words "except as provided in Section 106"; and in the third line, after the word "indebtedness," insert the words "at par or face value."

Argument For. In providing that no public utility shall issue stocks, bonds, etc., "to an amount exceeding that which may be necessary and reasonably required to enable such public utility to perform its duty to the public," the section appears to require securities to be sold at a premium if they will command a premium. It is unwise, under any circumstances, to require any portion of the capital of public utility to be issued above par.

Argument Against. The question of issuing securities at par arises ordinarily only in the case of stocks. So far as bonds are concerned, the adjustment of interest rates ordinarily will suffice to keep prices of new issues at or below par. Respecting the issue of stock at prices above par, the section seems not to be designed to accomplish this purpose. The section is practically identical with the similar provision of the New York

Public Service Commission's law. It does not appear that the New York provision has ever been interpreted to authorize the Commission to require stock to be issued at a premium.

Suggestion. (b) In the fifth line, substitute for the phrase "to perform its duty to the public," the phrase "to accomplish the objects of its incorporation."

Argument For. The words "to perform its duty to the public" seem unduly to restrict the action of the utility. The investor must have reasonable freedom to make a public utility property a financial success, or he will invest in some other form of enterprise. Strictly speaking, it is not a part of the duty of a street railway to the public to establish and operate an amusement park, but the financial success of the railway may to a considerable extent depend on the establishment of such a park.

Argument Against. In jurisdictions where statutes governing the incorporation of public service companies restrict the scope of such companies to the performance of public duties, the two phrases are practically synonymous. Where, however, incorporation laws are liberal enough to authorize a company to be organized for the purpose of engaging in a private as well as a public business, the distinction between the two phrases is important. Companies organized to perform public duties enjoy privileges which are not accorded to companies organized for purely private purposes. The very performance of a public duty is a privilege in itself, because of the power to tax which it implies. On the other hand, such companies are subjected to certain definite responsibilities which are not imposed on companies organized for private purposes. The bill under consideration is an evidence of such responsibilities. So long as the distinction exists between a public business and a private business, it would seem desirable that they be performed by separate and distinct agencies. Otherwise, the credit growing from the privileges enjoyed in the conduct of the public business might be employed to further a private business, while the supposedly greater risks of the private business might become a burden on the public business. By combining a public and a private business in one organization, the enjoyment of the special privileges might be seriously abused. Whether the amusement park business is so closely allied with the public business of furnishing street railway service as to render the conduct of such business a part of the public duty of the street

railway company, is a matter which belongs properly to the general law of each jurisdiction. If, however, the two businesses are not so closely related, it must be evident that the street railway company should not be authorized to use its credit to enter upon and engage in the private competitive amusement park business. This bill seems to place no restrictions on the power of a public utility to invest its surplus in whatsoever manner it will.

Section 105.

Suggestion. Beginning in the second line strike out the words "or of services or property at the true money value thereof as found and determined by the Commission," and insert in place thereof the words "services, property or other consideration." In the next to the last line, insert the words "of value" before the word "equal."

Argument For. The amendment brings this section into conformity with the proposed revision of Section 103—see proposal (a).

If the value of the consideration received for security issues is left absolutely and finally to the Commission, utility securities are likely to become quite unattractive to the investor. Commissioners cannot be expected to avoid mistakes in judgment in matters of value. The determination of value is of vital importance to the investor and he will be slow to develop or extend the utility if after he has paid what he considers a fair price for service or property he may be prevented from realizing or earning a return on a part of his investment, simply because the commissioners think that he paid too high a price. There should clearly be an appeal to the court for review in case of disagreement in this important matter of value.

Argument Against. First, the suggested amendment substitutes for the enumeration of the kinds of consideration the following enumeration, "money, services, property or other consideration." Every conceivable consideration will fall under the head either of property or services. Money itself is property. In the section, however, the distinction is made between money on the one hand and property and services on the other hand. A money consideration needs no appraisal. It is only property other than money or services that require appraisal. The purpose of this section is not to enumerate the kinds of consideration but to confer power on the Commission to value the consideration when it is other than money. The suggested amendment mistakes entirely this purpose.

Second, the elimination of the authority conferred on the Commission to value the consideration emasculates the section. The suggested amendment is nothing more than a re-statement of the general law of practically every State. It is the general rule that stock may be issued at not less than par for value received. Value, however, is left to the determination of the board of directors. Section 105 substitutes for this determination the findings of the Commission. This substitution is a fundamental part of the plan of regulation proposed by the bill. The suggested amendment is a collection of meaningless words so far as the regulation of stock issues is concerned. Experience in States where provisions are, in effect, practically identical to Section 105, would seem to indicate that investors welcome the certificate of the Commission that new securities issued represent real value added to the property. The practical operation of the section is that the investor referred to above makes his contracts for services or property subject to the findings of the Commission as to value. Under the suggested amendment there is no occasion for a court review for the simple reason that nothing is left for the determination of the Commission.

(Sections 103, 105, 106 and, to a lesser degree, Section 104, are the foundation stones of the article on stocks and bonds. With these sections eliminated or emasculated, most of the remaining sections of the article would have little, if any, value. These are the sections that establish the standards. Included in this category are Sections 107 and 108. Sections 109–116 inclusive clearly are subordinate to the fundamental sections. For instance, Section 109 would have little force if it were not supported by the substitutive rules of the preceding sections. Various proposals have been made for the modification of the subordinate sections. As all of these proposals are predicated on the modification of the fundamental sections, which amounts virtually to the substitution of a plan of publicity for a plan of regulation, the proposed substitutes for the subordinate sections are not considered in detail. The primary question raised in connection with all of the sections may be resolved to the issues concerning the relative advisability of a plan of regulation based alone on publicity and a plan which contemplates the substitution of the judgment of the administrative commission for the judgment of the board of directors in such matters as the propriety of the purpose for which securities are proposed to be issued, the necessity of issues, the value of the consideration moved for issues when such consideration is other than money, the treatment of debt discount and expense, and the relative proportions of stocks and bonds. Mention should be made, however, of one line of objection made to Sections 109–116. Public utilities, whenever possible, arrange for the sale of their securities in advance of the expenditure of the proceeds. Markets for utility securities are by no means constant quantities. They fluctuate widely and rapidly and a public utility may be able to save very considerable amounts through its ability to take advantage of favorable market conditions. Most public utilities base their financing on budgets of estimated expenditures for at least a year in advance. The items in the budget are estimates which are subject to change during the year. Within its limitations, the budget is the best information available on which to base financing and, while individual items may change, the budget as a whole is usually quite accurate. Such financing in advance, it is said, however, would be impracticable under the requirements of Sections 109–116. It would be impossible in advance of construction to furnish to the commission the information which it would be necessary for it to have to issue an order in the form required by Section 109. Furthermore, the procedure required is unnecessarily cumbersome and would be exceedingly burdensome and expensive in the case of many properties. Definite details of procedure should not be prescribed under the act. Different methods of procedure might properly be adopted in a small State like Rhode Island from those adopted in a large State like Texas.

These objections may be answered briefly. Under the theory of the bill, regulation means the ascertainment by the commission of certain definite facts. If these facts are required to be ascertained and are ascertained, it follows necessarily that the commission should be empowered to take the steps necessary to determine the facts (Section 111)and to set forth the facts in its order of approval (Section 109). As already stated, Sections 109–116 are subordinate to Sections 103–108 and must stand or fall with these sections.

As to the financing of requirements in advance, the objections place an unwarranted inter-

pretation on the act. The bill is not inconsistent with budget financing. This is demonstrated by practical experience with similarly constructed acts. The customary procedure is for utilities to ask for and obtain authority to issue securities to meet the requirements of specific budgets. Proof is required to be made that expenditures are made in accordance with the budget requirements (Sections 119, 126) and in proving such proof, commissioners are obliged necessarily to recognize the practical limitations of the budget method. Although this plan of supervision has been employed in some States for a number of years, the extended discussion of these sections has failed to disclose a single instance in which it has interfered with generally accepted methods of financing.

Application to the commission for authority to issue securities and investigation by the commission necessarily consume time and involve some outlay, both on the part of the applicant and of the commission. This would appear to be an inevitable consequence of any substantial plan of supervision. If the cost of regulation is found to exceed the gains, regulation cannot exist. It must be remembered, however, that the alternative to regulation is public ownership and operation.

Section 106.

Suggestion. (a) This section should conform to Section 105, and if Section 105 is amended as suggested this section should be similarly amended.

Suggestion. (b) Strike out this section and substitute for it a section providing for the issue of stock having no par value.

Argument For. The placing of a par value on stock certificates is an anomaly. Capital stock represents the right to control or manage a company and a right to participate in the distribution of such profits as there may be. The labeling of stock with a par value leads to a misapprehension of the nature of the stock. No-par-value stock squares with the fact and eliminates most of the problems connected with the attempt to regulate stock issues.

Argument Against. The objections to the no-par-value idea are practical rather than theoretical. The financial world and investors are accustomed to shares having definite par values. If corporations could be re-financed from the beginning, it might be feasible to institute the no-par-value share. An attempt at this late day to compel a substitution might lead to disaster. It would seem that the subject is one for general legislation affecting all corporations, private as well as public service, and that, at the first, the no-par-value plan of financing by stock issues should be optional and not obligatory.

Section 107.

Suggestion. (a) The parenthetical phrase in line three may be omitted if Section 106 is amended in accordance with the foregoing suggestion.

Suggestion. (b) After the last word of the section, add the following: "except with the permission of the Commission."

Argument For. This will make the requirement more elastic and give the Commission authority to afford relief in exceptional cases. In a year of dull business it might be impossible to maintain both the regular rate of dividends and the plan of amortization. A reduction in rate of dividends might result in loss of credit and inability to render adequate service, which would be more harmful to the public, as well as to the stockholders, than a delay in carrying out the plan of amortization.

Argument Against. The Commission, in the first two lines, already is given discretional power respecting the application of amortization rules. The suggested amendment would seem neither materially to add to nor detract from the section.

Section 108.

Suggestion. The section should be eliminated.

Argument For. In connection with Sections 105 and 106 this section leads to an impossible conclusion in authorizing the Commission to determine the relative amounts of stocks and bonds which shall be issued. See also Section 109. If the stock of a company on the market is worth less than par, no amount of persuasion on the part of the Commission would avail to secure new financing by the use of stock issues at par. Consideration of these sections leads to the conclusion that the best results will be obtained by authorizing the issue of stocks and bonds at the market value, rather than at values arbitrarily limited to par in case of stock and to not less than 75 per cent. of par in the case of bonds.

Argument Against. The less-than-par value of outstanding stock on the market would seem to be one of the considerations which would influence a determination of the relative amount of stocks and bonds which should be outstanding. It is not reasonable to suppose that the bill attempts to accomplish the impossible.

Sections 103, 119, 238.

Suggestion. Provisions should be inserted in the bill qualifying or limiting the right to declare stock dividends or to divide among

stockholders the proceeds from the sale of stock, at least after liberal dividends have been distributed.

Argument For. Surplus earnings in excess of reasonable returns on property employed in the public service should be treated as funds held in trust for the benefit of the service and not for the benefit alone of stockholders. While the State has the right so to regulate rates as to limit the amount of surplus earnings, such regulation necessarily in many cases is imperfect. It may be, and frequently is, sound public policy in many cases, however, for the State to sanction earnings in excess of requirements for reasonable returns by refraining from exercising its rate-fixing powers. Such public policy, however, is founded not on the needs of stockholders but on the needs of consumers and the public at large. Reasonable surpluses strengthen credit and enable service to be developed along lines which add to the convenience and safety of the public and which might be deemed impracticable if they required new financing. Such surpluses, however, being contributed by consumers, should not subsequently be appropriated for the exclusive use of stockholders. Consequently, the bill should prohibit the declaration of stock dividends where earnings have been sufficient to enable fair returns to be made on the money contributed by stockholders and the distribution of the proceeds of stock issues made to replenish the treasury for capital expenditures made from income in excess of fair returns.

Argument Against. Granting the right of the State to regulate rates, the surplus of a company must be considered as belonging to the stockholders. Any restriction on the interest in surplus of the stockholders constitutes an arbitrary limitation on the benefits of investment in public utility enterprises and renders more difficult financing of such enterprises. The public suffers by the resulting restriction of development. Furthermore, such limitation as is proposed on the right to distribute the corporate surplus among stockholders has an *ex post facto* effect and does violence to fundamental principles of justice. What a company earns belongs to the stockholders. If the stockholders see fit to employ surplus earnings in the business, they have a right to do so but their temporary appropriation of surplus profits for the benefit of the business should not prejudice their privilege subsequently to withdraw surplus earnings for their own use.

SECTIONS 101, 103, 107, 109, 110.

SUGGESTION. Incorporate in the article an express provision authorizing bond issues in excess of immediate requirements and the mortgaging of property to secure the full amount, subject to approval by the commission of the sale of any part of such bond issues.

Argument For. A customary means of financing public utility properties is to mortgage the properties in excess of immediate requirements under plans whereby bonds are sold, only as funds are actually required. In the absence of express authorization, the bill, as it stands, might be construed to defeat this plan of financing by preventing the mortgaging of property in excess of immediate requirements.

Argument Against. Under the provisions of statutes identical with the provisions of this bill, the plan of financing suggested has been applied repeatedly. No reason appears why such a plan could not be carried out under this bill. This plan of financing seems in no wise to conflict with the theory of the bill.

SECTION 118.

SUGGESTION. Add to the section at the end the following: "and any amount or amounts properly spent incidental to securing such franchise, right or privilege."

Argument For. Without the proposed amendment, Section 118 prevents the capitalization of expenditures incidental to securing any franchise other than the amount actually paid as a consideration for the granting of such franchise. The necessary and legitimate expenditures incurred in securing franchises over and above payment made to the City or State amount frequently to a very material sum which could not reasonably be provided from the earnings of the year in which the franchise is obtained. Such expenditures are similar to legal expenses, engineering services and other general expenses in connection with creating the property of the utility and seem to be equally a proper subject for capitalization.

Argument Against. Franchises, rights and privileges are property. Section 103 authorizes in sub-paragraph (a) the issue of stocks and bonds when necessary and reasonably required for the purpose of the acquisition of property. The in-

cidental expenses referred to may be capitalized under the provisions of Section 103.

SECTION 119.

SUGGESTION. (a) Strike out this section entirely.

Argument For. Under this section many consolidations of distinct advantage to the public would be prevented. If the consolidation involved a shrinkage in the total amount of securities outstanding, it probably never would be made, no matter what its advantages might be, and the retirement of a fractional part of the outstanding securities involves practical difficulties. Owners of the properties would be reluctant to submit to a capital reduction which would not be necessary if a merger were not made. Section 132 provides that no merger or consolidation shall be made until an order shall have been procured from the commission approving such merger or consolidation. Under this section, the commission has full control over the details of any plan for consolidation because it can withhold its approval until all details are satisfactory. The interests of the public seem to be fully protected by Section 132. Section 119 seems unnecessary. The amount of securities to be issued in case of consolidation should be left to the judgment of the commission, based on the circumstances of each individual case.

Argument Against. The attempted exercising by the commission under Section 132 of power to limit the amount of securities would be unconstitutional because of the absence of a specific standard prescribed by the legislature for application to such cases. The commission is an administrative body. It is all very well to talk of leaving matters of this kind to the judgment of the commission, but experience has demonstrated that interested parties, who are not pleased with the judgment of the commission when it is exercised, are prone to seek relief from the effects of such judgment by attacking in the courts the constitutionality of the supposed delegation of authority. In the absence of a definite standard prescribed by the legislature, it is safe to assume that the commission will be enabled to exercise no control whatsoever over the amount of securities issued in case of consolidation or merger.

SUGGESTION. (b) Strike out the last two lines and substitute therefor the following: "shall not exceed the par value of the out-

standing stocks and bonds of the public utilities parties to such merger or consolidation."

Argument For. The argument in behalf of this suggested amendment is set forth in the dissenting memorandum of Messrs. Bassett, Gray and Maltbie which accompanies the bill.

Argument Against. Value should be recognized in consolidations, as elsewhere, as the basis for capitalization. While the value standard may result in the capitalization of surpluses and unearned increments, it is not to be denied that these belong to the company and not to the public. The alternative rule which makes the outstanding securities of the consolidated companies the measure of security issues on consolidation, results in perpetuating over-capitalization.

SECTION 121.

SUGGESTION. Limit this section and Section 239 so that they may not be construed to apply to the impairment of capital effected before the bill becomes law.

Argument For. Such legislation as is contemplated here should be content to draw a curtain on the past and to deal with new situations as they arise, solely on their merits regardless of early indiscretions or misfortunes.

Argument Against. The relation between the property of a public utility and its outstanding securities is a continuing relation. It is not so closely identified with the act or series of acts from which it results as to make retroactive legislation designed to correct such relation after it becomes existent. The legislation deals with the condition that exists and not with the cause of that condition. If the condition is such as to impair the ability of the company to perform its primary duties, the condition should be corrected.

SECTION 151.

SUGGESTION. Insert after the word "reasonable" in the second line the words: "taking into account the adequacy of such rates and the requirements, obligations and necessities of the public served and of the public utility."

Argument For. The words "just and reasonable," without further explanation, are incomplete and will be interpreted in many cases in a manner harmful to the public as well as to investors. Rate regulation frequently fails to give proper consideration to adequacy as an important element of reasonableness. Inadequate rates must result in inadequate and unsatisfactory service. Competition is still free and unhampered in the investment of money. An investor will not furnish capital to a utility which is charging inadequate rates when there are plenty of other utilities or other forms of investment from which he can obtain an adequate return. The act in its present form helps to perpetuate a mistaken point of view with reference to adequacy, for it provides for adequate service without any qualification or limitation with heavy penalties for failure, and refuses to recognize or provide for adequacy as one of the elements in determining the reasonableness of rates. The bill should make clear that adequacy is an element and the importance of a definite recognition of adequacy in the bill is emphasized by the fact that the courts have recognized the distinction between inadequate and confiscatory rates.

Argument Against. The rule of justness and reasonableness is the common law rule. It includes adequacy and every other element of rate reasonableness. The rule is as broad as any rule could be. It is broader than the rule proposed for the reason that the specification of one element of justness and reasonableness, namely, adequacy, may be construed to exclude other elements. In a number of jurisdictions, commissions, in applying substantially identical rules, have authorized the increase of rates. The Interstate Commerce Commission recently has authorized a general increase of freight rates in certain localities under a substantially similar rule. There can be no question about the legal effect of the term "just and reasonable." This term is employed in all of the sections of the bill which confer authority on the commission to deal with rates. (See Sections 77, 80, 157, 159, 162.)

A positive objection to the use of the language suggested lies in the apparent broadening of the scope of judicial review which would result. The denial of an adequate rate by the commission does not ordinarily defeat the legality of rates fixed by the commission. With the rule changed so as to specify adequacy as one of the elements of reasonableness, it is likely that the courts would assume jurisdiction of the

determination of what constitutes adequacy in a particular case. This is not desirable.

Section 157.

Suggestion. Add to the section a new sentence, as follows: "No change shall be made in any rate until authority therefor shall have been obtained from the Commission."

Argument For. The commission should be consulted about every new rate that goes into effect; otherwise its work will not be effective. The damage caused by unjust, unreasonable or discriminatory rates cannot be completely remedied. Prevention is better than cure. It is true that Section 158 authorizes the commission to suspend the operation of new schedules for a limited period pending an investigation. This section, however, is likely to place the commission in a bad light because of its requirement that the commission take the initiative in an investigation. Besides, the time limitation may not be adequate in all cases. Furthermore, the proposed amendment relieves the public utilities from all possible criticism that might arise from changes in rate schedules.

Argument Against. Few, if any, of the commissions have the facilities to enable them expeditiously to examine and pass upon new rate schedules as they are filed. An effective organization for this purpose could be maintained only at a prohibitive cost. Because of the slowness of the commission machinery, rate schedules would tend to become rigid and fail to respond to changes in public requirements. Regulation is not management and the public utilities should not be relieved of their duty of fixing rates in the first instance. Responsibility for the conduct of public utility enterprises should be left with the utilities themselves subject only to supervision and the exercise of mandatory powers in cases of necessity.

Section 162.

Suggestion. Strike out this section.

Argument For. No public utility should be subjected to two investigations regarding the same subject matter of complaint—the first investigation by a State commission and the second by a Federal commission.

Argument Against. Under the established separation of State and Federal jurisdiction in the regulation of interstate public utilities, it is an entirely proper function of a state Commission to present to the Federal commission matters which seem to the State commission to require remedying but which it has not the power to affect.

Section 201.

Suggestion. Insert after the word "safe" in the second line, the words "in so far as the public utility is reasonably able to furnish such service and facilities."

Argument For. Taken literally, the section as now worded cannot be enforced. The services and facilities of a public utility cannot be made absolutely safe by any known means and cannot permanently be adequate if rates are inadequate. The requirement of adequacy and safety should be qualified either in the manner suggested or by the use of the word "reasonably." Both adequacy and safety are relative terms and the statute, by recognizing them to be such, should avoid the danger of making public utilities insurers of the safety of their plant and equipment on the one hand, and responsible for providing the highest standards of service on the other hand.

Argument Against. The rule of service, adequacy and safety is the common law rule. It has been recognized and applied for many years and the dire results predicted for this section, if enacted into law, have not been experienced. If this section were adopted in a State whose courts have interpreted the words "adequate" and "safe," to require absolute standards of perfection, it might be well to qualify the requirement somewhat in the manner suggested.

Section 210.

Suggestion. After the words "public utility" in line six, insert the words "with which it is not or will not be in competition."

Argument For. This section if enacted would constitute a serious menace to the business and perhaps to the solvency of

existing corporations. It would open the door for the irresponsible promoter by furnishing facilities which would otherwise not be obtainable except by raising the capital necessary to the purchase and installation thereof. If a new-comer should offer to furnish service in a restricted area of an existing company's territory at a price very much below that necessarily charged by the existing public utility, it is hardly to be expected that a public service commission would surely withstand the pressure of public opinion in favor of an application for authority on the part of the new-comer to use the conduits, poles, lines or other facilities of the existing company in such area. Such an inroad on the existing company's business would result in serious losses and would materially diminish the ability of the existing utility to furnish adequate service at reasonable rates in its territory outside the invaded area. The proposed amendment restricts the operation of the joint provision for joint use of facilities to companies which are not or will not be in competition.

Argument Against. This section is and should be considered an undivided part of an entire bill. One of the abuses aimed at in the bill is ruthless competition such as that described in the argument for the proposed amendment. Sections 272-275 are designed to prevent the establishment of unnecessary and wasteful competition. This section aims at an abuse which is all too frequent in many cities. This is the unnecessary duplication of facilities in streets and highways which results not only in unsightliness but in public discomfort and danger. Where competing companies are established in the same territory, it is not unreasonable to require them in the general interest to use the same conduits and the same poles and tracks in the public streets.

Section 210 as it stands contains a number of limitations which should protect every proper interest. The facilities proposed to be used jointly must be "*along* any street or highway whether on, over or under such street or highway." The joint use must not prevent the owner or other users thereof from performing their public duties. It must not result in serious injury to such owner or other users. No substantial detriment to the service of the owner or other users shall result. No danger to the public or to employees must occur. Before the section can be applied, all of these conditions must be found by the commission to exist. It is not reasonable to suppose that a provision so hedged about by safeguards will be abused.

SECTION 211.*

* NOTE. Objection has been made to this section similar to that directed to Section 210. The chief alternative that has been proposed, however, left the determination of the joint use or physical connection to the company owning the facilities sought to be used. This would seem to involve no element of regulation but simply to state what is common practice among telephone companies—namely, that physical connections be made when and as agreements are arrived at between the owners of telephone properties capable of physical connection. There would seem to be good reason, subject to the safeguards or limitations found in this section, to require telephone companies which have monopolies in particular areas or between particular localities to throw open these facilities to companies capable of effecting physical connections. It should be observed that the commission is authorized specifically to fix the charge which shall be made to the public for the use of continuous lines resulting from physical connection.

SECTION 230.

SUGGESTION. See Section 15.

SECTIONS 235–239.

SUGGESTION. (a) Substitute for these sections the following: "Every public utility shall make such reasonable provision for the replacement and renewal of its property necessary to enable it to maintain the adequacy, efficiency and quality of its service. The commission may prescribe rules, regulations and forms of account regarding such provision for replacement and renewal of property which public utilities shall carry into effect. Such rules, regulations and forms of account may be general or, at the discretion of the commission, may be special to apply to the conditions of any public utility or class of public utilities. The commission may in its discretion ascertain and determine and by order fix the proper and adequate amounts to be provided for replacement and renewal on the several classes of property of each public utility or on its property as a whole. Amounts so fixed may be modified from time to time by the commission on its own initiative or after hearing on application by the utility requesting a modification of such amount. The moneys set aside by a public utility for replacement and renewal of

property may, with the approval of the commission, be invested, until required for this purpose, in the stocks, bonds, notes or other evidences of indebtedness of the utility or used for such other purposes and under such rules and regulations as the commission may from time to time prescribe."

Argument For. The sections in their present form absolutely require every public utility to carry a proper and adequate depreciation account which, in the light of recent court and commission decisions, clearly means a depreciation reserve necessary to offset all theoretical depreciation which has taken place in the property. This has not been the practice of public utilities in the past, is entirely unnecessary and would be impossible to carry out in the case of many existing utilities. Even where possible, it would involve a needless increase in rates now charged or a postponement of a decrease in rates. A public utility must make reasonable provision for the replacement and renewal of parts of its property whenever this becomes necessary to maintain a proper quality and efficiency of service, but this is an entirely different matter from providing a fund to offset all theoretical depreciation. Many public utilities make adequate provision for replacements and renewals; none, so far as we know, are attempting to provide a fund to offset theoretical depreciation.

Argument Against. We know of no one who professes to have said the last word on the subject of depreciation. Whether "depreciation" means so-called theoretical depreciation or merely provision for replacements and renewals, the bill does not attempt to say. Substantially, the language of the bill has been applied with apparent success over a period of years by a number of commissions in a number of States. The sections in question are the joint product of a number of experts representing commission and corporation experience under substantially similar provisions of law. These sections establish definite and specific general standards for the guidance of a commission in dealing with the necessarily complex and intricate problem of depreciation in general. The proposed substitutes would seem to be open to criticism on the score that they do not contemplate providing for property which is worn out, superseded or destroyed and never replaced or renewed. The fundamental purpose of a depreciation account seems to be to keep a continuing and accurate balance between property values and the amounts at which they are entered in books of account. Mani-

festly, it would be absurd, in the case of a going concern, so to apply these sections as to accomplish over a period of years by regular deductions from earnings the creation of a fund held intact equalling the original cost of the property.

Sections 235-239—Contd.

Suggestion. (b) In every case where the word "depreciation" occurs, insert thereafter the words "and obsolescence."

Argument For. Obsolescence is a factor in the depreciation of property values. The elements of obsolescence do not correspond in all respects with the elements of depreciation. In some of the public utility businesses obsolescence is a more important cost factor than depreciation. This is particularly true of the telephone business in which such articles of equipment as switch boards have repeatedly been discarded long before they reached the end of their useful lives because of improvements in the art.

Argument Against. The tenor of commission and court decisions leaves little doubt that the term depreciation is used ordinarily in such cases generically to denote loss in value whether due to wear and tear, natural causes, improvements in the art, or what not. Under these circumstances it is difficult to perceive what useful purpose will be served by attempting to differentiate between depreciation and obsolescence in this bill.

Suggestion. (c) Add the following provision to Section 237: "No order shall be entered by the commission under the provisions of this section until a public hearing shall have been held, of which the public utilities concerned shall have been given notice."

Argument For. The determination of depreciation rates may have a vital effect on the public utilities to which the rates are made to apply. The chief danger is that rates will be fixed at so high a point that companies may be obliged to discontinue or change materially policies on which depend the maintenance of their credit. Companies should be afforded an opportunity at least to be heard in opposition to any such proposed order involving a radical change in their financial arrangements.

Argument Against. Experience has not justified the implied criticism of the practical operation of commission loss. The

very nature of depreciation negatives the supposition that commissions will attempt to prescribe uniform rates of depreciation for all utilities of the same or different kinds. Failure to recognize the need of protecting the integrity of capital accounts leads inevitably in the long run to financial ruin. This is directly opposed to the best interests of the public or of bona fide investors. In considering rates of depreciation on the properties of any company, the commission would be obliged to look to the company for the necessary information. Utilities necessarily would be advised in this way that the commission was considering the subject. Maintaining the integrity of capital accounts is a matter of so great importance that no unnecessary restraints should be placed on the action of the commission.

Sections 272-274.

Suggestion. Substitute the following sections for those of the same numbers in the bill:

272. *Certificate Before Furnishing Service.* No public utility shall, after this act goes into effect, furnish service in this State or begin the construction of any plant or facility therefor in the public streets until it shall have obtained a certificate from the commission that public convenience and necessity require the furnishing of such service or the construction of such plant or facility; but the requirements of this section shall not apply to any public utility which is furnishing service or which has any plant or facility for the furnishing of service under construction at the time this act goes into effect.

273. *Certificate for Service.* No public utility shall, after this act goes into effect, furnish any service of a different kind or class than that previously furnished by it, or furnish any service in a place or territory other than that in which it shall previously have operated, or exercise any right or privilege under any franchise or permit theretofore granted but not theretofore actually exercised or the exercise of which has been suspended for more than one year, until it shall have obtained a certificate from the commission that public convenience and necessity require the furnishing of such service; but the provisions of this section shall not prevent any public utility from furnishing service from any plant or facility which is being constructed at the time this act goes into effect

274. *Certificate of Convenience and Necessity.* Whenever after hearing the commission determines that any new construction or

the furnishing of any new service by a public utility as provided in the two preceding sections will promote the public convenience and necessity it shall have the power to issue a certificate to that effect, and in such certificate may define the kind or class of service and the area in which it may be supplied, and may limit and define the territory in which such construction may be made.

Argument For. The original Section 272 operates as a prohibition against all new work or extensions by existing companies. It should be made to apply only to new public utilities. Sections 272 and 273 are amended to except from their operation utilities which have begun construction but are not furnishing service when the act goes into effect. The amendment to Section 274 brings this section in conformity to Sections 272 and 273 as amended.

Argument Against. Literally construed, Section 272 probably is susceptible of the interpretation placed upon it by the objection. The accompanying sections, however, indicate the fallacy of such an interpretation. Legislation is to be construed in the light of the purpose sought to be effected, and when the purpose is clear, as here, it may safely be assumed that commissions and courts will find a reasonable meaning. The proposed substitute for Section 272 is open to the objection that it applies only to public utilities which come into existence after the act takes effect. The revised Section 273 as proposed does not operate effectively to restrict the operations of public utilities existing at the time the law is enacted because of the indefiniteness of the expression "in a place or territory other than that in which it shall previously have operated." This expression, used in an abbreviated form in the revised Section 273, is given a definite meaning by the relationship established between the place and territory and the franchise or permit. The original sections place an emphatic embargo on "new" services and "new" construction, in the case of all companies (Section 272) and on the use of unexercised franchises (Section 273). The proposed substitutes are open to the further objection that they become operative only at the time the act goes into effect, while the original sections operate from the day the law is enacted. When, as is frequently the case, a considerable period intervenes between the enactment of the law and its effective date, some opportunity for evasion may be afforded by holding such provisions as these in abeyance.

SECTIONS 277–289.

SUGGESTION. Strike out these sections.

Argument For. It is outside the province of a bill for the regulation of public utilities to deal with the manner of granting, regulating and extinguishing franchise rights. This subject should be dealt with, if at all, in a separate bill. Its treatment here fails to do justice to the larger relations between the municipality and the State. These objections are discussed at greater length in the dissenting memorandum attached to the bill of Messrs. Bassett, Gray and Maltbie.

Argument Against. Franchise relations have been a prime source of annoyance to public utilities and to the public. They have resulted at times in less satisfactory service and higher rates than would be possible with rational adjustments of the franchise subject. This bill recognizes the public nature of the duties of these companies and the inherent right of the public to regulate their conduct. The same measure should recognize and put an end to the franchise problem. The indeterminate franchise is the best arrangement that has been devised. It secures to a company uninterrupted enjoyment of the right to operate during good behavior, while reserving the right of the public to determine the franchise at will by purchasing the property employed. No plan of regulation is complete which does not contemplate removing the evils of short-term franchises.

SECTION 277.

SUGGESTION. In line six, after the word "provide," insert the word "specifically." In line seven, after the word "municipality," insert the words "at some definite date."

Argument For. The purpose of the proposed amendment is to clarify the meaning of the section.

Argument Against. The suggested amendment seems to conform to the purpose of the section and is not objectionable.

SECTION 278.

SUGGESTION. (b) Strike out the last sentence which reads as follows: "A franchise so obtained, however, shall be subject to alteration, amendment or repeal by act of the legislature."

Argument For. This sentence seems to defeat the whole purpose and intent of the indeterminate franchise provisions, which are to procure wherever possible the consent of the utility to the purchase of its property at any time by the municipality in consideration of receiving an indeterminate franchise in place of a term franchise. A public utility could not afford to give up a term franchise for a franchise subject to alteration, amendment or repeal at any time by act of the legislature. It is well known that the constitutions and laws of some States reserve the power of alteration, amendment or repeal of all charters. In other States, it seems to be established that this power is somewhat qualified so that the action can not be entirely arbitrary. It appears further that the power of repeal contained in existing laws, while it may be used to terminate the charter or franchise to be a corporation, cannot arbitrarily be used to terminate the rights in the street, or the franchise to operate, without providing in some form or other for recompense to the utility for the damages which it suffers through some action. It seems evident that the courts would hold that a utility accepting an indeterminate franchise under this section had expressly assented to the withdrawal of all its rights and that it would have no recourse from the action of the legislature amending or repealing the franchise no matter how arbitrary or unreasonable such action might be. The provision is not only impracticable but it contradicts and is inconsistent with the fundamental principle of an indeterminate franchise.

Argument Against. It is self-evident that a franchise is worthless for the promotion of the public welfare which does not extend full protection to the bona fide investments made thereunder. It may be admitted frankly that the courts have not arrived at a uniform interpretation of the reserve clauses in the constitutions and statutes of the several States. It may also be admitted with the same degree of frankness, that public policy no longer sanctions the granting of rights in streets and public places on a basis which assumes to prejudge conditions which may arise in the future. Violation of the first assumption, naturally, will put a stop to investment. Violation of the second assumption is likely to produce in years to come a condition under which the State will be obliged to resort to indirect methods to accomplish that which it has surrendered its rights to accomplish directly. The most that can be said for the provision of this section to which objection is made, is that the

State should reserve to itself in the granting of indeterminate franchise rights the fullest measure of freedom in dealing with future conditions as they arise consistent with the inviolability of bona fide investment induced by such indeterminate franchises. In its application to particular jurisdictions this provision should be scrutinized carefully with respect to its effect on property rights under the local interpretation of reserved powers.

SUGGESTION. (c) Add to the section, the following: "A franchise so obtained shall be not limited in time but shall continue in force until such time as the municipality shall exercise its right to acquire, as provided in this act, or until it shall be otherwise terminated according to law."

Argument For. It seems to have been the intention of the framers of the bill that Section 277 in defining the duration of future grants should apply to indeterminate franchises substituted for term grants under the provisions of Section 278. Section 277, however, is limited to grants made by municipalities and seems not to be applicable to the indeterminate franchise arising from the operation of Section 278. It becomes necessary, therefore, to state specifically, in connection with Section 278, the nature of the franchise substituted for the term franchise with respect to its duration. This is the purpose of the proposed amendment which follows the similar provision of Section 277.

Argument Against. The suggestion seems to be well made and to require incorporation in the bill.

SECTION 279.

SUGGESTION. Strike out the words "for the just compensation and under the terms and conditions of purchase and sale determined by the commission" and insert in place thereof the words, "for the just compensation and the damages, if any, and under the terms and conditions of purchase and sale determined in the manner hereinafter provided."

Argument For. The section appears to be in conflict with Section 286. By requiring a public utility to agree to the taking of its property for just compensation and under terms and conditions "determined by the commission," Section 286 pro-

vides for an appeal from the determination of the commission. With regard to the proposed insertion of the words "and the damages, if any," see the summary of arguments in favor of amendments proposed to Section 285.

Argument Against. Sections 286–289 do not authorize the court on appeal from a determination of the commission to fix either the compensation or the terms and conditions of purchase and sale. The transaction is consummated, if at all, on the basis of the just compensation and terms and conditions determined by the commission. Consequently, there seems to be no inconsistency between this section and Section 286.

Section 280.

Suggestion. (a) Amend paragraph (e) by inserting after the word "service" at the end of line two the words "or for municipal purposes only."

Argument For. A municipal plant for street lighting or other municipal uses only, will result in most cases in needless duplication without financial or other gain to the city. The public are entitled to protection in this matter as in others.

Argument Against. There may be a measure of doubt as to whether the non-duplication provisions apply to a plant constructed by a city to perform strictly municipal services, such as the lighting of streets and public places and the furnishing of power for municipal departments. In Wisconsin, whose legislation on this subject was a model to a large degree for the provision in question, the interpretation seems to be that municipalities may not construct facilities for purely municipal purposes without obtaining authority from the commission.

Suggestion. (b) Amend paragraph (e) of this section by adding at the end of the section the following: "And no municipality shall hereafter enter upon the original construction of any municipal plant for use in supplying public utility service to others, without first taking by condemnation, purchasing by agreement or offering to purchase under the terms of this act the plant and property of such public utility engaged in such service."

Argument For. The bill at present requires a public utility to sell its property to the city whenever the city desires to buy,

but it allows the city after obtaining a certificate of convenience and necessity to enter into competition with the privately owned utility. This is not just nor equitable. Competition between a municipal and a private plant can never be fair and even. Burdens are imposed on the private utility which are not applied to the municipal plant. Taxes paid by the private plant may be used to build up and strengthen the municipal plant. In this way the private plant may be forced to contribute to its own destruction. This is unfair and destructive competition which public sentiment ordinarily condemns. The federal government has given much consideration to laws for the punishment of unfair and destructive competition. The establishment of a municipal plant, without offering to purchase at a fair price the property of a public utility rendering similar service would seem to be an act of the same general character as those which are so generally condemned. A city may be subject to even greater condemnation because the community has encouraged investment in the private utility, and perhaps has been served and benefited by it for many years. Altogether apart from the question of justice and equity, however, municipal competition is uneconomical and wasteful. The burden must ultimately fall on the consumer. If the investor is required to take the risk of this menace he will require a higher rate of pay for his capital. Massachusetts for many years has required municipalities to purchase the property of private utilities before establishing municipal plants. The requirement of the city to obtain a certificate of public convenience and necessity is not strong enough to ensure purchase of the private plant and prevent the possibility of competition. If it were there could be no objection to providing specifically in the bill for the purchase of the private utility before the municipal plant is started.

Argument Against. The objection strikes at the heart of a community's right to provide for its citizens services which are essentially public in character. Competition admittedly is uneconomical and wasteful. This conclusion necessarily is founded, however, on the premise that the existing agency is discharging its duties in a faultless manner. Justice implies correlative rights and obligations. To say that municipal competition can never be justified under any circumstances is to attach too great importance to the public spirit of private agencies. Such a virtual guarantee of immunity from competition might defeat the

very purpose of the bill by engendering carelessness and indifference to the just demands of the public. Potential competition may be worth its cost in procuring adherence to the spirit as well as the letter of the law. This section sets up a substantial preventive of municipal competition in its requirement that a certificate of public convenience and necessity be issued from the commission before a municipality begins the original construction of a public utility plant or facility. In the light of experience this protection seems reasonable. The proposed amendment might result in anything but equitable results under some circumstances. A property which has been allowed to deteriorate excessively may have little or no value to a municipality which is proposing to instal a modern and highly efficient utility. Where is the justice of requiring a municipality to predicate such a useful public improvement on the purchase of a useless property which owes its present condition to the greediness and selfishness of its owners?

Section 281.

Suggestion. Strike out the first sentence and substitute therefor the following: "Any municipality may determine to acquire the property of a public utility as authorized under the provisions of this act by a vote of the municipal council, taken after a public hearing of which at least thirty days' notice has been given, and ratified and confirmed by a majority of the electors voting thereon, at any general, municipal or special election, held not less than four months after the passage of the vote of the municipal council."

Argument For. Time should be provided for careful inquiry and consideration before a final vote is taken committing a city to municipal ownership. The suggested amendment places no obstacle in the way of municipal ownership, beyond providing time for careful discussion and presentation of facts before final action is taken.

Argument Against. The policies of the several states regarding the submission to the voters of legislative proposals of one kind and another differ radically. The section is phrased so that it may conform to whatever may be the established policy or to whatever legislation may be enacted independently of this bill to provide for such contingencies. Legislation fixing the manner in which municipalities may arrive at a determination

to embark on municipal ownership deserves careful and thoughtful consideration, but no reason presents itself for segregating this question from others involving exactly similar principles.

Section 285.

Suggestion. In the fifth line, after the word "received" insert the following words: "Therefor and the damages, if any, caused by the severance of the property of the utility purchased or to be purchased by the municipality, from any property of the utility purchased or to be purchased by the municipality."

In line seven after the word "compensation" insert the words "and damages, if any"; in the same line after the word "taking" insert the words "and severance." In line twenty-six after the word "public" insert the words "and the damages, if any, caused by the severance aforesaid."

Argument For. The section as it stands provides that a municipality shall pay just compensation for the property of a public utility taken. Under Section 283 a municipality may or may not purchase the whole or any part of the facilities of a company which lies outside the limits of the purchasing municipality; and the act does not provide for the payment of any damages to the company by reason of the severance of the outlying property from inlying property purchased. If a company has outlying property which is severed from the rest of its property, particularly from the source of supply of the commodity furnished by the company, very serious damages might result from such severance. Distributing plants in adjoining towns would be of no value whatever except as junk unless they were connected with some other source of supply. Similarly, the value of an outlying source of supply might be destroyed entirely if the city were to purchase alone the inlying distribution system.

Argument Against. The question raised by the objection deserves serious consideration in each jurisdiction. Its determination depends largely on the local law of the jurisdiction. The term "just compensation" has been used in this connection with apparent success for a number of years in at least one jurisdiction. The consequences of severing parts of an entire property from the whole are so apparent as to require no elaboration. On the other hand, the rule of compensation should not be so broad as to violate the equities of particular cases as they

arise, and to require arbitrarily the appraisal and payment of damages which are the remote and not the immediate consequences of the act of purchase.

Sections 334–336.

Suggestion. Eliminate these sections from the act entirely.

Argument For. These sections are retroactive in effect. In some cases they might prove not only embarrassing but possibly disastrous to the public utility complained of. If the one complainant succeeded in maintaining his right to reparation, any and all other customers might avail themselves of the decision and compel restitution of a portion of the amounts paid by them with interest from dates of payment. The public utility thus would never know whether its statement of earnings was correct until after a lapse of at least two years. It may have distributed its earnings in the form of dividends or have spent them in improvements on its property, and yet find that they were not properly applicable to either of those purposes; and that such payments involved the necessity of making no further distributions of this character until its indebtedness upon all claims for reparation have been satisfied. This condition of things would be perpetual. A few cases of this kind would shake the credit of public utilities. Rates made public and placed on file with the commission should be assumed to be fair until they have been adjudged otherwise. Moreover, if it is fair to give the customer a right to collect over-payments made by him in the past, in case the rate paid is subsequently adjudged to be excessive, it would be equally fair to give the utility the right to collect an additional amount from the customer if the charge for the past services, especially on rates established by the commission, is subsequently adjudged to have been inadequate. But this is not suggested.

Argument Against. The courts have ample authority to relieve public utilities from the burden of unreasonable rates fixed by commissions pending a determination of their reasonableness. Where rates fixed by utilities themselves subsequently are found to have been less than reasonable, the utilities have no just cause to complain.

These sections do not create a right accruing to customers to reparation for excessive amounts paid in the past. The right

now exists and always has existed. Furthermore, the right in the absence of legislation of this character may be asserted, ordinarily, any time within a period of six years following the payment. Every business transaction is likely to give rights to a cause of action which may be asserted by one party to the prejudice of another within the period of the statute of limitations, and accordingly no statement of corporate liability ever is entirely accurate. Far from being retroactive in the sense that new rights are created pertaining to past transactions, the sections in question cut off immediately in many cases inchoate rights. Like the remainder of the bill these sections simply provide a new remedy for the assertion of existing rights.

Section 338.

Suggestion. Strike out the section as contained in the bill and insert the following in place thereof: "Any person in interest being dissatisfied with any order or decision of the commission may commence an action in the court of record of general jurisdiction in such matters and for the county in which the commission has its principal office. Such action may be begun by filing in such court a transcript of the complaint, answer and final order of the commission, and it shall not operate as a *supersedeas* unless the commission or court shall so order. All the proceedings before the said commission, including any of the evidence which either party claims to be material, if a record thereof has been kept, the requests for rulings made by the parties, the findings of the commission and any orders issued thereon, may be used in such action. If the court decides that the commission has erred in point of substantive law, the proceedings shall be remanded to the commission with directions to make such new or further amended orders or to take such other action as the opinion of the court upon the point or points of law submitted to it may require. Provided, however, that no such action shall be sustained on the ground of improper admission or rejection of evidence, or for any error as to any matter of pleading or procedure, or for any other matter, if in the opinion of the court the error complained of will not injuriously affect the substantial rights of the parties."

Argument For. As the section now stands, the court has appellate jurisdiction only in case the order of the commission violates a "provision" of law. This limits the jurisdiction of the court to questions arising upon the construction of statutes

and leaves the commission supreme as to the interpretation of all questions of common law. Questions of admissibility of evidence, matters of procedure or other secondary matters, or any other points which, in the opinion of the court, do not go to the merits of the case, should not be subjects of appeal.

Argument Against. The argument favorable to the proposed amendment is directed to that portion of Section 338 which authorizes an appeal to the courts from an order of the commission on the ground that if enforced, the order would violate "a provision or provisions of any law of this State or of the Constitution of this State or of the United States." It would seem that this purpose would be accomplished equally well without the circumlocution of the proposed amendment by substituting for the words objected to those which are quoted in the following paraphrase of the original section: Any person being dissatisfied with any order of the commission may commence an action in court to vacate such order on the ground that if enforced the order would violate "any law of this State or the Constitution of this State or of the United States." Surely, this phraseology would give the court full jurisdiction to hear any and every question of substantive law that might be raised. It must be evident, however, that extended argument and superlative eloquence would be required to convince a court that the term "a provision of law" comprehends only statute law to the exclusion of common law so-called.

APPENDIX B

RAILROAD AND PUBLIC SERVICE COMMISSIONS

	Name of Commission	Location of Office	Number of Commissioners	Manner of Selection	Terms of Office in Years	Salaries of Members	Bonds of Members
UNITED STATES	Interstate Commerce Commission	Washington, D. C.	Seven	Appointed	Seven	$10,000	
ALABAMA	Railroad Commission of Alabama	Montgomery	Three	Elected	Four	3,000 3,500[1]	
ARIZONA	Corporation Commission	Phœnix	Three	Elected	Six	3,000	
ARKANSAS	Railroad Commission of Arkansas	Little Rock	Three	Elected	Two	2,500	
CALIFORNIA	Railroad Commission of the State of California	San Francisco	Five	Appointed	Six	6,000	
COLORADO	Public Utilities Commission [a]	Denver	Three	Appointed	Four	5,000	
CONNECTICUT	Public Utilities Commission	Hartford	Three	Appointed	Six	5,000	
DISTRICT OF COLUMBIA	Commissioners of the District of Columbia [b]						
FLORIDA	Railroad Commissioners of the State of Florida	Tallahassee	Three	Elected	Four	2,500	
GEORGIA	Railroad Commission of Georgia	Atlanta	Five	Elected	Six	2,500 4,000[1]	
IDAHO	Public Utilities Commission of the State of Idaho	Boise City	Three	Appointed	Six	4,000	
ILLINOIS	State Public Utilities Commission	Springfield	Five	Appointed	Six	10,000	$20,000
INDIANA	Public Service Commission	Indianapolis	Five	Appointed	Four	6,000	10,000
IOWA	Board of Railroad Commissioners	Des Moines	Three	Elected	Three	2,200	

[a] The operation of the Public Utilities Commission Law is suspended pending a referendum.
[b] The functions of a Public Service Commission were imposed on this body by an act approved March 4, 1913.

RAILROAD AND PUBLIC SERVICE COMMISSIONS—*Continued*

	Name of Commission	Location of Office	Number of Commissioners	Manner of Selection	Terms of Office in Years	Salaries of Members	Bonds of Members
KANSAS	Public Utilities Commission	Topeka	Three	Appointed	Three	$4,000	$10,000
KENTUCKY	Railroad Commission	Frankfort	Three	Elected	Four	3,000 3,600[1]	
LOUISIANA	Railroad Commission of Louisiana	Baton Rouge	Three	Elected	Six	3 000	
MAINE	Board of Railroad Commissioners	Augusta	Three	Appointed	Three	2,000 2,500[1]	
	Public Utilities Commission*		Three	Appointed	Seven	4,500 5,000[1]	
MARYLAND	Public Service Commission	Baltimore	Three	Appointed	Six	5,000 6,000[1]	
MASSACHUSETTS	Board of Gas and Electric Light Commissioners	Boston	Three	Appointed	Three	4,500 5,000[1]	
	Public Service Commission	Boston	Five	Appointed	Five	8,000 8,500[1]	
MICHIGAN	Michigan Railroad Commission	Lansing	Three	Appointed	Six	3,000	
MINNESOTA	Railroad and Warehouse Commission	St. Paul	Three	Elected	Six	4,500	20,000
MISSISSIPPI	Mississippi Railroad Commission	Jackson	Three	Elected	Four	2,000	
MISSOURI	Public Service Commission	Jefferson City	Five	Appointed	Six	5,500	

*The Public Utilities Commission comes into existence July 1, 1913, and supersedes the Board of Railroad Commissioners, exercising all of the powers of the latter, September 1, 1913. Operation of Public Utilities Commission law is suspended pending a referendum in September, 1914.

MONTANA	Board of Railroad Commissioners of the State of Montana Public Service Commission	Helena	Three	Elected	Six	$4,000	$25,000
NEBRASKA	Nebraska State Railway Commission	Lincoln	Three	Elected	Six	3,000	
NEVADA	Railroad Commission of Nevada Public Service Commission of Nevada	Carson City	Three	Appointed	Three	2,500[2] 4,000[2] 5,000[1]	
NEW HAMPSHIRE	Public Service Commission	Concord	Three	Appointed	Six	3,000 3,200[1] 3,500[1]	
NEW JERSEY	Board of Public Utility Commissioners	Trenton	Three	Appointed	Six	7,500	
NEW MEXICO	State Corporation Commission	Santa Fe	Three	Elected	Six	3,000	
NEW YORK	Public Service Commission, First District	New York	Five	Appointed	Five	15,000	
	Public Service Commission, Second District	Albany	Five	Appointed	Five	15,000	
NORTH CAROLINA	Corporation Commission	Raleigh	Three	Elected	Six	3,500	
NORTH DAKOTA	Board of Railroad Commissioners of North Dakota	Bismarck	Three	Elected	Two	2,000	10,000
OHIO	Public Service Commission of Ohio	Columbus	Three	Appointed	Six	6,000	
OKLAHOMA	Corporation Commission	Oklahoma City	Three	Elected	Six	4,000	
OREGON	Railroad Commission of Oregon	Salem	Three	Elected	Four	4,000	10,000

PENNSYLVANIA	The Public Service Commission of the Commonwealth of Pennsylvania	Harrisburg	Seven	Appointed	Ten	$10,000 10,500	
RHODE ISLAND	Public Utilities Commission	Providence	Three	Appointed	Six	3,500 4,000[1]	
SOUTH CAROLINA	The Railroad Commission	Columbia	Three	Elected	Six	1,900	
	Public Service Commission		Three	Appointed	Six	10, per diem	$1,000
SOUTH DAKOTA	Board of Railroad Commissioners of the State of South Dakota	Pierre	Three	Elected	Six	1,500	5,000
TENNESSEE	Railroad Commission of the State of Tennessee	Nashville	Three	Elected	Six	3,000 4,000[1]	20,000
TEXAS	Railroad Commission of Texas	Austin	Three	Elected	Six	4,000	
VERMONT	Public Service Commission	Newport	Three	Appointed	Six	1,700 2,200[1]	
VIRGINIA	State Corporation Commission	Richmond	Three	Appointed	Six	4,000[2]	
WASHINGTON	The Public Service Commission of Washington	Olympia	Three	Appointed	Six	5,000	20,000
WEST VIRGINIA	Public Service Commission	Charleston	Four	Appointed	Eight	6,000	
WISCONSIN	Railroad Commission of Wisconsin	Madison	Three	Appointed	Six	5,000	

[1] Salary of Chairman, President or Chief Commissioner.
[2] Salary of First Associate Commissioner.
[3] Salary of Second Associate Commissioner.
[4] Minimum Authorized by Constitution.

APPENDIX C

Report to the National Civic Federation Commission on Public Ownership and Operation.

Your Committee on Investigation beg to report as follows:

After our appointment on October 5, 1905, we met and appointed a sub-committee to prepare a plan of procedure and investigation. It was decided that the committee should visit a number of undertakings in certain American cities, and then should go abroad and make a similar investigation in certain cities in Great Britain, comparing the methods and results of municipal and private ownership. Much attention was given to the investigation in Great Britain, because it was felt that the American public was not so familiar with conditions abroad as at home, and because in the contests that have been waged for public ownership, allusion has always been made and prominence given to conditions in British cities.

Your committee decided to employ both company and municipal men as experts, so that when investigating a gas plant, for example, there should be ordinarily one expert who had been employed by a private gas company and another to act with him who had been employed by a municipality. A long series of questions was prepared and various special reports were called for, some from the members of the committee who were detailed for this purpose and some from outside experts employed to investigate specific matters. All of these reports and schedules have been carefully prepared and are published herewith. While it may appear upon a superficial glance that there is too much of this work, we trust it will be appreciated by the student and by those particularly interested, and that these statistics and reports will do great good in the future as works of reference upon this important subject.

We wish here, at the beginning of our report, to tender our sincere thanks to the gentlemen in charge of the public utilities in the cities we visited in the United States and Great Britain for their polite attention and thoughtful consideration. Nothing could have been fairer or kinder than the treatment that they gave us. We examined their plants; we asked for detailed reports upon a long list of matters, which were cheerfully given. Whatever may be our opinion of the merits of municipal or private ownership, we are unanimous that no more courteous treatment could have been accorded any one.

It is difficult to give positive answers of universal application to the questions arising as to the success or failure of municipal ownership as compared with private ownership. The local conditions affecting particular plants are, in many cases, so peculiar as to make a satisfactory comparison impossible, and it is very difficult to estimate the allowance that should be made for these local conditions. For instance, in making deductions from the financial conditions of Wheeling, as affected by its gas plant, as compared with those of Atlanta and Norfolk with their private plants, allowance must be made for the presence of natural gas in Wheeling. Again, in comparing the public water works of Syracuse with the private water works of Indianapolis from the point of view of the success or failure of municipal operation, geographical conditions must be taken into consideration. The situation at Syracuse is extremely favorable to the establishment of an efficient plant with comparatively little effort on the part of its management. At Indianapolis the conditions are unfavorable. In Syracuse the water flows to the city by gravity; in Indianapolis it must be pumped. So we might go through the various cities here and abroad that have been visited and show that the results were affected favorably or unfavorably by special conditions applicable to each city.

Further, the difficulty of reaching satisfactory results by the comparative method is not confined to special or local conditions. It is true, as well, of much broader questions. Thus any attempt to compare municipal with private electric light plants in the United States would be fruitless if allowance were not made for the fact that in most cases such municipal plants are confined to street lighting and may not do commercial business. Allowance must be made also for the fact that many municipal plants have had a struggle to exist in the face of unsympathetic public opinion. Again, in England consideration must be given to the fact that the municipal electric light and street railway plants have permanent rights, while the rights of the private companies operating these particular utilities are limited as to the length of their existence, many street railway franchises expiring twenty-one years after they were granted.

Finally, not only must it be borne in mind that the social and political conditions which characterize the two countries find expression in their private and public systems, but we must consider the difference in the nature of the two peoples which causes them to adopt different ideas and views to the expediency of certain things. In other words, a measure of success in the municipal management of public utilities in England should not be regarded as necessarily indicating that the municipal management of the same utilities in

this country would be followed by a like measure of success. Conditions are quite different in the two countries, as will be seen from an examination of the various reports that follow.

There are some general principles which we wish to present as practically the unanimous sentiment of our committee.

First, we wish to emphasize the fact that the public utilities studied are so constituted that it is impossible for them to be regulated by competition. Therefore, they must be controlled and regulated by the government; or they must be left to do as they please; or they must be operated by the public. There is no other course. None of us is in favor of leaving them to their own will, and the question is whether it is better to regulate than to operate.

There are no particular reasons why the financial results from private or public operation should be different if the conditions are the same. In each case it is a question of the proper man in charge of the business and of local conditions.

We are of the opinion that a public utility which concerns the health of the citizens should not be left to individuals, where the temptation of profit might produce disastrous results, and therefore it is our judgment that undertakings in which the sanitary motive largely enters should be operated by the public.

We have come to the conclusion that municipal ownership of public utilities should not be extended to revenue-producing industries which do not involve the public health, the public safety, public transportation, or the permanent occupation of public streets or grounds, and that municipal operation should not be undertaken solely for profit.

We are also of the opinion that all future grants to private companies for the construction and operation of public utilities should be terminable after a certain fixed period, and that meanwhile cities should have the right to purchase the property for operation, lease or sale, paying its fair value.

To carry out these recommendations effectively and to protect the rights of the people, we recommend that the various states should give to their municipalities the authority, upon popular vote under reasonable regulations, to build and operate public utilities, or to build and lease the same, or to take over works already constructed. In no other way can the people be put upon a fair trading basis and obtain from the individual companies such rights as they ought to have. We believe that this provision will tend to make it to the enlightened self-interest of the public utility companies to furnish adequate service upon fair terms, and to this extent will tend to

render it unnecessary for the public to take over the existing utilities or to acquire new ones.

Furthermore, we recommend that provision be made for a competent public authority, with power to require for all public utilities a uniform system of records and accounts, giving all financial data and all information concerning the quality of service and the cost thereof, which data shall be published and distributed to the public like other official reports; and also that no stock or bonds for public utilities shall be issued without the approval of some competent public authority.

We also recommend the consideration of "the sliding scale," which has proved successful in some cases in England with reference to gas and has been adopted in Boston. By this plan the authorized capitalization is settled by official investigation, and a standard rate of dividend is fixed, which may be increased only when the price of gas has been reduced. The subway contracts and their operation in Boston and New York are also entitled to full consideration.

In case the management of public utilities is left with private companies, the public should retain in all cases an interest in the growth and profits of the future, either by a share of the profits or a reduction of the charges, the latter being preferable, as it inures to the benefit of those who use the utilities, while a share of the profits benefits the taxpayers.

Our investigations teach us that no municipal operation is likely to be highly successful that does not provide for:

First—An executive manager with full responsibility, holding his position during good behavior.

Second—Exclusion of political influence and personal favoritism from the management of the undertaking.

Third—Separation of the finances of the undertaking from those of the rest of the city.

Fourth—Exemption from the debt limit of the necessary bond issues for revenue-producing utilities, which shall be a first charge upon the property and revenues of such undertaking.

We wish to bring to your consideration the danger here in the United States of turning over these public utilities to the present government of some of our cities. Some, we know, are well governed, and the situation on the whole seems to be improving, but they are not up to the government of British cities. We found in England and Scotland a high type of municipal government, which is the result of many years of struggle and improvement. Business men seem to take a pride in serving as city councillors or aldermen, and the government of such cities as Glasgow, Manchester, Birmingham and

others includes many of the best citizens of the city. These conditions are distinctly favorable to municipal operation.

In the United States, as is well known, there are many cities not in such a favorable condition. It is charged that the political activity of public service corporations has in many instances been responsible for the unwillingness or inability of American cities to secure a higher type of public service. This charge we believe to be true. However, there seems to be an idea with many people that the mere taking by the city of all its public utilities for municipal operation will at once result in ideal municipal government through the very necessity of putting honest and competent citizens in charge. While an increase in the number and importance of municipal functions may have a tendency to induce men of a higher type to become public officials, we do not believe that this of itself will accomplish municipal reform. We are unable to recommend municipal ownership as a political panacea.

In many cases in the United States the people have heedlessly given away their rights and reserved no sufficient power of control or regulation, and we believe that corruption of public servants has sprung, in large measure, from this condition of things. With the regulations that we have advised, with the publication of accounts and records and systematic control, the danger of the corruption of public officials is very much reduced.

To sum up, certain of the more important of our conclusions are:

1st. Public utilities, whether in public or in private hands, are best conducted under a system of legalized and regulated monopoly.

2nd. Public utilities in which the sanitary motive largely enters should be operated by the public.

3rd. The success of municipal operation of public utilities depends upon the existence in the city of a high capacity for municipal government.

4th. Franchise grants to private corporations should be terminable after a fixed period and meanwhile subject to purchase at a fair value.

5th. Municipalities should have power to enter the field of municipal ownership upon popular vote under reasonable regulation.

6th. Private companies operating public utilities should be subject to public regulation and examination under a system of uniform records and accounts and of full publicity.

7th. The committee takes no position on the question of the general expediency of either private or public ownership. The question must be solved by each municipality in the light of local conditions. What may be possible in one locality may not be in

another. In some cities the companies may so serve the public as to create no dissatisfaction and nothing might be gained by experimenting with municipal ownership. Again, the government of one city may be good and capable of taking charge of these public utilities, while in another it may be the reverse. In either case the people must remember that it requires a large class of able men as city officials to look after these matters. They must also remember that municipal ownership will create a large class of employes who may have more or less political influence.

We trust that these suggestions may aid the people, whenever the time may come, in making a wise decision.

The above report is approved by the following nineteen members of the Committee of Twenty-one. Mr. Mahon was kept away from the sessions by sickness. Mr. Walton Clark wrote a separate minority report.

Melville E. Ingalls, *Chairman.*
Edward W. Bemis,
William J. Clark,
John R. Commons,
Charles L. Edgar,
Walter L. Fisher,
Frank J. Goodnow,
John H. Gray,
Timothy Healy,
Daniel J. Keefe,
Milo R. Maltbie,
H. B. F. Macfarland,
F. J. McNulty,
Edward A. Moffett, *Secretary,*
Frank Parsons,
Albert Shaw,
J. W. Sullivan,
Talcott Williams,
Albert E. Winchester.

MESSRS. CHARLES L. EDGAR AND W. J. CLARK DISSENT AS TO PARTICULARS.

We, the undersigned, dissent from the report of the investigating committee, as follows:

1st. The report says:

"We have come to the conclusion that municipal ownership of public utilities should not be extended to revenue-producing industries which do not involve the public health, the public safety, public transportation, or the permanent occupation of public streets or grounds, and that municipal operation should not be solely for profit."

This sentence is so drawn that to a casual reader it implies that the opposite is advisable. From this we strongly dissent.

2nd. The report says:

"To carry out these recommendations effectively and to protect the rights of the people, we recommend that the various states should give to their municipalities the authority, upon popular vote under reasonable regulations," etc.

The words "under reasonable regulations" were put into the report at the suggestion of Chas. L. Edgar, and were intended by him to mean such regulations as would compel deliberate consideration not only by the people but by their representatives, and would consequently prevent the superficial attractiveness of the scheme from overriding the sober second thought of the people. We strongly dissent from any definition of "regulations" which does not cover these points.

3rd. The second and fifth conclusions in the latter part of the report, being merely repetitions of previous statements, are, of course, subject to the same dissents.

Charles L. Edgar,
W. J. Clark

MINORITY REPORT.

To the Commission on Public Ownership of the
National Civic Federation:

Gentlemen:—I have the honor to submit the following report of the minority of the Committee on Investigation, appointed by you under a resolution as follows:

Resolved, That Melville E. Ingalls, Talcott Williams, W. D. Mahon, Frank J. Goodnow, Walton Clark, Dr. Albert Shaw, Edward W. Bemis, John H. Gray, Walter L. Fisher, Timothy Healy, William

J. Clark, H. B. F. MacFarland, Daniel J. Keefe, Frank Parsons, John R. Commons, J. W. Sullivan, Leo S. Rowe, F. J. McNulty, Albert E. Winchester, Charles L. Edgar, Milo R. Maltbie, be appointed a Committee of Twenty-one to investigate in this country and in Europe the advisability of private and municipal ownership affecting gas, water, electric power and light, and street railways, and that this Committee of Twenty-one be empowered to fill vacancies or add to their number, subject to the approval of the Chair.

I regret that my understanding of your charge to the Committee of Twenty-one, to investigate and report to you, as per the above resolution, leads me to the necessity of presenting a minority report.

I agree with my associates on the importance of directing your attention to the dangers and difficulties attending municipal ownership. I do not dissent from their conclusion that companies entrusted with franchises and charters for the operation of so-called public service industries should be subject to regulation. I write a minority report because, if I correctly understand your instructions to your Investigating Committee, the majority report does not, in its form and scope, answer your reasonable expectation; and because I am not able to agree with what I understand to be the meaning of some few of the statements made therein.

Recognizing the almost supreme importance of an adequate and cheap supply of pure water, I dissent from one of the recommendations of my associates, in effect that water works should be operated by public bodies. I dissent for the reason that my study of the report of the water works expert employed by your committee, and my personal investigations, lead me to the conclusion that the water companies have made the more intelligent efforts toward adequacy and purity of supply, and that, all conditions considered, the result of their efforts has been and is a better and cheaper water supply and service than that maintained by the municipal water works departments.

I agree with the majority that such governmental conditions as exist in Glasgow, Manchester and Birmingham are "distinctly favorable" to municipal ownership, as they must be to every urban activity, public or private. The fact that the results of the investigations we have made in these well-governed cities have not led my associates to commend municipal ownership as we have there observed it, or to recommend that our American cities adopt municipal ownership, is pregnant with meaning, and indicates another point upon which we are in accord.

My knowledge of the question, had from personal investigation, and from a study of the reports of the experts employed by the

commission, and of the writings of its members leads me to the conclusion that the city and citizens of Glasgow, Manchester and Birmingham, as well as of the other municipalities investigated, are not so well served by their public service trading departments as the cities and citizens of London, Newcastle, Sheffield, Dublin and Norwich are by companies operating similar trading industries, and that there is no element of blessing in the municipalization of the former cities to compensate for the indifferent character of the service rendered.

I dissent from the statement of my associates that "we take no position on the question of general expediency of either public or private ownership." I come from the study of this question, and from the investigations in which I have had a share, including that of the municipal plants selected as being the most successful in Great Britain and in this country, ready, and with confidence, to take a position on the question of general expediency.

Because the investigation, in which, through your favor, I have had the honor to have a part, has convinced me that municipal ownership has not proven equal to private ownership in benefits to the consumer, citizen or city, I am not able to agree with the majority of the Committee that the way should be left open for any municipality to undertake any trading operation, without special authorization by the legislature of the state wherein it is located. I cannot believe that the prescribed remedy for any ill should be a worse ill, and I cannot recommend that a municipality suffering, or believing that it suffers, under company administration of a public utility, should be given the right to engage in the operation of such utility for itself, without such a course of procedure as will make sure that the sober second thought of the people shall have ample opportunity for development and expression, before the community is committed to municipal ownership, with the accompanying dangers and difficulties, of which you are warned in the majority report.

Because I believe that the general credit of municipalities should be conserved for the benefit of public and necessary improvements, from which, in the nature of things, private enterprise is excluded; and because I believe that a municipality should not be permitted in any event to engage in any trading enterprise that will not pay its own way, and have the confidence of the citizens as financially sound, I recommend that municipalities be prohibited, by statute, from making investments in trading operations, except with money borrowed on mortgage, or otherwise, the loan being secured by a lien on the plant in which it is invested, and on the right to operate the same, and on these only.

Because I believe that it is practically impossible to secure private funds for investment in an enterprise subject to purchase by a municipality, at a date to be selected by the municipality; and because I believe that the impossibility of so securing private investment may, and often will, work a social harm to a community, I dissent from the opinion of the majority that a city should have the right to purchase, at its option, the property of public service corporations for operation, lease or sale.

I believe in state regulation and protection of public service companies. I do not understand that your committee was charged with the duty of recommending to you a form of regulation. I know that your committee made no special study of this subject. Therefore I am not prepared to propose any detailed plan of regulation.

Finally, regretting to be in any degree in conflict of opinion with my associates, I may still satisfy my sense of duty to my fellow-citizens and my sense of obligation to you for the honor of a share in this important work, by recording the conviction I am under at the close of this investigation.

I am convinced that the condition of the British people, individually or collectively, has not been improved by the municipalization of the industries we have investigated.

I believe that political and social conditions in the United States are less favorable to the success of municipal ownership than are the same conditions in Great Britain.

I find this conclusion strengthened by our investigation into municipalized industries in the United States.

I am convinced that, under American conditions, the system of private ownership of public utilities is best for the citizens and consumers.

I recommend state regulation and protection of public service companies, provided by statute, and as far as possible automatic in its application and operation.

I realize that in the main the majority and the minority of your committee are in accord. Wherein we differ, the minority appeals with confidence to a careful reading of the records of your committee for judgment as to the reasonableness of its conclusions and recommendations.

Respectfully submitted,

WALTON CLARK.

[illegible] [illegible] [illegible]

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TITLE